

Lon L. Fuller

LAW AND CONTEMPORARY PROBLEMS

VOLUME I

MARCH, 1934

NUMBER 2

FOREWORD

In the space of two years, the problem of low-cost housing has been transmuted by the alchemy of economic emergency from a topic for academic discussion and decorous agitation to the objective of a program for immediate action. This abrupt transition has revealed that while the evils to be attacked and, to a lesser extent, the goals to be attained by such a program are well-defined, the ways and means of achieving the ends in view are far from manifest. Money is available; the architects' blueprints are ready; but action has been slow in forthcoming.

Moreover, it has grown increasingly evident in this period that our legal mechanism is ill-adjusted to the demands which the housing program has made upon it. To divert the private corporation, the mortgage, and the lease, traditional tools of private enterprise, to the task of effectuating a long-term social policy, or, in the alternative, to create public bodies charged with duties which heretofore have never been entrusted to governmental agencies, and, in either event, to devise means of subjecting such instrumentalities to the remote control of Washington, such has been the initial burden which has been imposed upon the lawyer. The improvisation of statutes, the hasty begetting of corporations and authorities, the elaboration of contractual controls, bear witness to our legal unpreparedness, as well as to the energy and ingenuity of counsel who have been pressed into this service.

They have laid the legal foundations for the American housing program; experience alone can disclose whether these will prove equal to their load. In the meantime, that program moves on—to new problems. Land must be assembled. Our clumsy condemnation procedure may crack under the strain. The limits of federal eminent domain power may have to be determined. Eventually, however, the dirt will fly; buildings will rise. One can forecast a host of legal questions which will then arise out of the operation of these projects. Some have been guarded against; the solution of others must await the event.

When housing, as part of the recovery program, comes to an end, the housing problem will not have been solved. The slum and the blighted area will still be with us, and the processes which have produced them will still be at work. It is probable that then a new attack must be begun, perhaps on a broader front, perhaps with different weapons. Here, again, there will be work for the lawyer.

For the immediate present as well as for that not-distant future, it is essential that thoughtful consideration be directed to the legal problems integral to low-cost

housing. And since these problems are not severable from the economic, social, and political questions to which they are linked, they should be the concern of the business man, the property owner, and the student of the social sciences, as well as of the lawyer and the legal scholar. But the responsibility is peculiarly that of the legal profession. Law has too long been merely the wisdom of hindsight, and legal science but its refraction. Conscious planning for the needs of the future is now in order.

The symposium which constitutes this issue of *Law and Contemporary Problems* has for its primary purpose the presentation of the legal problems which those engaged in the housing movement have encountered and must reckon with. In consonance with the policy of the periodical, there has, however, been an attempt to present these problems in historic perspective and to relate them to their current social context. With this end in view, several articles have been included which do not purport to deal directly with matters of immediate concern to the lawyer. There has, however, been no effort to supplement the already extensive literature on the effects of improper housing or on the technological problems in the design and erection of suitable low-rental dwellings.

The plan of the symposium needs little elucidation beyond that afforded by the table of contents. Attention has for the most part been focussed upon the current program, not so much in the belief that it exhausts the possibilities of constructive action as in recognition of the immediacy of its demands. The housing problem leads directly, as Mr. Nelson in his suggestive study points out, to a consideration of the whole problem of the control of urban land use, while Messrs. Draper and Augur, in their contribution, make it clear that the problem does not stop at the city line. Yet if these and other leads had been pursued, the symposium would have grown to encyclopedic proportions. In such a situation, "space" becomes the arbiter.

The authors of the articles which follow are among the leaders of thought and action in this field. Recent developments have subjected them to a multitude of exactions upon their time and energies, and for their willingness to write for this periodical under the stress of such circumstances, the editor and his colleagues are deeply appreciative. The editor is especially indebted to Mr. Harold S. Bottenheim, Editor of *The American City*, and Mr. Charles S. Ascher, Executive Director of the National Association of Housing Officials, for their aid and counsel in the organization of this issue.

A CENTURY OF THE HOUSING PROBLEM

EDITH ELMER WOOD*

The housing problem is an inevitable feature of our modern industrial civilization and does not tend to solve itself. Supply and demand do not reach it, because the cost of new housing and the distribution of income are such that approximately two thirds of the population cannot present an effective demand for new housing. And while some of the older housing is acceptable enough, a great deal is shockingly inadequate.

It is not as though a wholesome circulation were established. If the worst of the old housing were automatically destroyed when and as new housing is built, one could look forward with some equanimity to the gradual elimination of slums. But that is not what happens. When the solid citizen builds himself a new house, he either moves farther from the center of the community to un-built-on land in search of more space and amenities, or he chooses a good built-up residence district and tears down a perfectly serviceable house which he or his wife feels is outmoded. He certainly does not move into the slums in order to demolish a rookery. Slum districts stagnate with no new building undertaken and few repairs, while new residential districts are built up on the periphery, and ever-increasing rings of blight spread outward from the center. One of the commonest types of slum is the near-in formerly good residence district, invaded by business, but never wholly taken over, where large single-family homes are cut up either into make-shift apartments or make-shift offices, for neither of which they are adapted, and the one-time gardens are filled with temporary structures intended to pay for taxes till the district is absorbed by high-grade business. Meanwhile taxes are paid on high valuations, not because of present use, but because of hopes for the future in which owners and assessors agree.

Unfortunately, our business districts some years ago began expanding vertically instead of horizontally. Then immigration was ended, and with that, the period of rapid growth of population. The birth rate is down and still falling. The drift from farm to city has been turned back. And we all know, or should know, that

* B.L., 1890, Smith; A.M., 1917, Ph.D., 1919, Columbia. Graduate of New York School for Social Work, 1917. Member of the New Jersey State Housing Authority. Consultant to the Housing Division of the Public Works Administration. Chairman, 1917-1929, national committee on housing of the American Association of University Women. Author of *The Housing of the Unskilled Wage Earner*, 1919; *Housing Progress in Western Europe*, 1923; *Recent Trends in American Housing*, 1931.

we are arriving at a period of relatively stable population. The future growth of our cities must be qualitative, not quantitative. The word "must" is used advisedly. For if our communities do not face the task of clearing up the muss that has been heedlessly made and restoring to efficient use their areas of slum and their areas of blight, they are facing bankruptcy. No city of relatively stable population can go on giving city services of paving, street cleaning, sewer, water, lighting, police, fire, schools, and all the rest, to ever-widening new peripheral districts, while ever-increasing inner areas are maintained for their dwindling population at increasing loss.

A generation ago, Sir Ebenezer Howard and the English Garden City group began to preach the doctrine that existing cities and towns are too bad to be worth trying to save and that the road to salvation lies in drawing off population and industries together to new garden cities planned from the start for convenient and healthy living, the land on which they are built being held in trust for the benefit of the community. Letchworth and Welwyn were built as demonstrations of what life in such communities might be for families of all economic levels. The demonstration is convincing. Letchworth and Welwyn are charming towns. But the British are still trying to find ways to save London and Manchester and Liverpool and Birmingham and Glasgow and Edinburgh, and I suspect our American psychology will be found to work the same way.

There has always been bad housing, but the acute awareness of it, as well as the effort to do away with it, are modern phenomena. The stream of European immigration to this country after the Napoleonic wars caused great congestion in our seaports. The establishment of industries drew workers to various centers. Just a century ago, in 1834, Gerritt Forbes, city health inspector in New York, made the first American reference to the subject on record, in a report where he called attention to the connection between high death rates and bad housing conditions, and their relation to the spread of epidemics. His successor, Dr. Griscom, made more extensive and emphatic reports. The Association for Improving the Condition of the Poor (A. I. C. P.) was founded as a result and conducted a housing survey, which, in 1847, reported that the tenements of the poor were defective in size, arrangement, water supply, warmth and ventilation, and that rents were disproportionately high. An investigation by the state legislature was made in 1857. But it was not till 1867 that the New York legislature passed the first tenement house law¹ for New York City, which was also the first exercise of the police power in this country to regulate the use of private property as tenement houses, in the interest of the health, safety and morals of tenants. For the first time, it became illegal in one American city to build a tenement house covering 100 per cent of its lot. A ten-foot yard had to be left at the rear for light and air.² A wholly subterranean room could no longer be rented

¹N. Y. Laws 1867, c. 908.

²Not until 1879 was it required that new tenements should be built with a window to the outer air in every room. More than 350,000 windowless rooms had been built in what is now New York

for human habitation. The ceiling must be at least one foot above curb level. City water must be somewhere on the premises, though a hydrant in the yard would do. It had taken thirty-three years of investigation and struggle to bring about this first step.

It took another third of a century of continued struggle to raise the standards of that first regulatory statute, by successive steps, to a comparatively adequate level, and to provide for its enforcement. The end of the period was marked by the report of the Tenement House Commission appointed by the Governor in 1900, the enactment of the New York Tenement House Law³ for first class cities in 1901, and the creation of the Tenement House Department to administer it in New York City, which began to function in 1902.⁴

Other cities, such as Boston, Philadelphia and Washington, less acutely suffering than New York, began to be housing conscious during this period and made some beginnings in regulation.

Parallel, but by no means keeping pace with these regulatory steps, were sporadic efforts by philanthropists to build model tenements, by employers to house their workers, and, toward the end, by limited dividend companies.

The last third of a century of housing consciousness was marked, first, by a spotty effort over the rest of the nation to catch up with or to surpass New York in restrictive housing legislation, on the model of the New York Tenement House Law. This was followed by a wave of zoning, which also started in New York, but became widely popular. Zoning also is an exercise of the police power, intended to regulate the growth of our communities in matters of use, height and bulk of buildings.⁵ It is preventive, not curative. We would have fewer blighted areas and less congestion on the land, had we started zoning sooner.

Meanwhile, we have witnessed the beginnings of a constructive approach to the housing problem, and with the opportunities now offered under the National Recovery Act as part of the Recovery Program, are, perhaps, standing on the threshold of a new era.

The more important American episodes along this newer constructive line may be listed as follows:

City before that date, and most of them are still in existence and in use, with no greater alleviation than a window cut in the partition to an adjoining room.

³ N. Y. Laws 1901, c. 334, 555.

⁴ Court decisions upholding tenement house acts have been numerous. A well known case was that of Katie Moeschén, owner of a tenement in New York, ordered to remove school sinks from the yard and install water closets in the house in 1903 under the act of 1901. The case was carried through the state courts to the Supreme Court of the United States, where the constitutionality of the Act was finally sustained. All decisions were unanimous. *Moeschen v. Tenement House Dept.*, 27 Sup. Ct. 781, 203 U. S. 583, 51 L. Ed. 328 (1906); *aff'd* *Tenement House Dept. v. Moeschén*, 179 N. Y. 325, 72 N. E. 231 (1904).

⁵ Among the many court decisions concerned with zoning, the most fundamental, perhaps, was that rendered by Justice Sutherland of the United States Supreme Court in the *Village of Euclid (Ohio)* case. *Ambler Realty Co. v. Village of Euclid*, 47 Sup. Ct. 114, 272 U. S. 365 (1926).

1. 1917. Massachusetts Homestead Commission was authorized to spend \$50,000 in buying suburban land, building houses with gardens, and selling them on long-time payments to workers living in congested quarters.⁶ This was a state public authority to build and sell at cost. Result, twelve houses on the outskirts of Lowell, sold to workmen.
2. 1918. The federal government undertook war housing for war workers.⁷ Aside from temporary housing, the Emergency Fleet Corporation and the United States Housing Corporation of the Department of Labor completed about 16,000 family units, mostly single-family houses in neighborhood groups, or complete new communities, which were of excellent standard. Many times that number were planned or under way.
3. 1921-24. Milwaukee secured legislation permitting the city and county to subscribe to the shares of coöperative housing companies.⁸ One such company was formed and 105 houses built on a well-laid-out site.
4. 1921. California enacted the Veterans Farm and Home Purchase Act,⁹ and the Veterans Welfare Board was established to administer it and other matters. The purpose is to aid home ownership on the part of veterans of small means, without expense to the tax-payers. Homes of excellent quality have been acquired by over 11,600 veterans, who are paying for them over a twenty-year period. Serial bonds have been issued to an amount of fifty million dollars. The veterans, not the tax-payers, pay principal and interest. Some 10,000 more approved applications awaited, at last accounts, authorization of the issue of further bonds.
5. 1926. The New York State Housing Law¹⁰ was enacted and the State Board of Housing established to administer it. The bill, as originally presented, provided for a State Housing Bank to finance limited dividend housing projects under the supervision of the State Board. The bank feature was eliminated by opponents in the legislature. New York City is the only community which has operated under this act. To facilitate low-cost housing, it granted twenty years tax exemption to buildings in projects approved by the State Board. The result during the years 1927 to 1932 were the building and operation of eleven garden apartment projects, in various parts of New York City, housing just under 2000 families, with average rentals in the several projects varying from \$9.73 to \$12.50 per room per month (heat included). Certain of these projects are coöperative. All are of high standard. Several involved small-scale slum clearance.
6. July 1932. The Federal Home Loan Bank Act¹¹ and its developments, which have already put 299 federal savings and loan associations into localities previously weak in credit facilities, may prove to be of outstanding importance in financing the small home owner.
- 7 and 8. The big new opportunities born of the depression have been the offer of 4 per cent loans to limited dividend housing companies under the Reconstruction Finance Corporation¹² (July, 1932) and the offer of loans and grant (June, 1933) under the National Industrial Recovery Act.¹³ The only result of the first, beside preparing the way for the second, was the loan of some eight million dollars to the Fred F.

⁶ Mass. Acts 1917, c. 309.

⁷ 40 STAT. 595 (1918).

⁸ Wis. Laws 1921, §1771b, Wis. STAT. 1929, §180.04.

⁹ Cal. Stat. 1921, c. 519.

¹⁰ N. Y. Laws 1926, c. 823, N. Y. CONS. LAWS (Cahill, 1930) p. 2781.

¹¹ 47 STAT. 725 (1932), 12 U. S. C. A. (Supp.) c. 1421.

¹² 47 STAT. 5 (1932), 15 U. S. C. A. (Supp.) c. 14, §605 b (a) (2).

¹³ 48 STAT. 195 (1933), 15 U. S. C. A. (Supp.) §701.

French Company to demolish two slum blocks in the Lower East Side of New York and put up 1600 garden apartments for white collar tenants, renting at an average of \$12.50 per month per room. Only three families previously on the site have any hope of living there. This project also is under the State Board of Housing.

Under N. I. R. A., the possibilities open wider. Some \$48,570,000 have already been allotted in loans to twenty limited dividend housing projects scattered over the country from New York to San Francisco and from Boston to the Virgin Islands. Rents in continental United States will range from \$5 to \$11 per room per month. Slum clearance is involved in a number of cases. Several of the projects are for Negroes, who are under particular difficulties in seeking for better housing. Eighteen of these projects provide homes for just under 10,000 families. In addition, a hundred million dollars are reserved for housing. Whether this will be expended by the recently created Federal Emergency Housing Corporation, organized to speed up action, but frozen into at least temporary immobility by a ruling of the Comptroller General,¹⁴ or by the also recently created state, county and city Housing Authorities, is comparatively unimportant. In either case, it is expected to be used for slum clearance and low-rent housing. Public housing authorities are eligible for a 30 per cent grant of cost of labor and materials, as well as for a 4 per cent loan of the balance needed, and should, therefore, be able to offer substantially lower rentals than limited dividend companies. They will not be in competition, as they will cater to lower income groups.

It has been said that 20 to 25 million dollars out of the hundred are earmarked for use in New York City and 20 million for Chicago.

The potential importance of these recent developments would be hard to exaggerate. One hundred and fifty million dollars,¹⁵ spread over the nation, can only produce demonstrations. But these demonstrations may have far-reaching results.

In looking back over our century of housing effort in the United States, it will be observed that approach to the problem has come from two directions, though one of them did not appear till quite recently. It was pointed out some years ago¹⁶ that all attacks on the housing problem are either restrictive or constructive. They either forbid something bad and set up minimum standards of building or maintenance, which must be observed under penalty of the law, or they seek to provide adequate housing on a public utility basis for sections of the population for whom private business enterprise does not find it profitable to build. Both forms of activity are necessary for a comprehensive solution. They supplement each other and are in no sense rivals. We cannot get on without requirements for running water, sewers, windows and fire-escapes. And it was real progress when zoning curbed individual freedom to put up a filling station or a chain store or a sky-scraper in a district of homes.

¹⁴ On March 6, 1934, an opinion of Attorney General Homer I. Cummings was issued upholding the legality of the Federal Emergency Housing Corporation and ruling that it could acquire and convey title to real estate and that its acquisitions were not subject to review by the Comptroller General.

¹⁵ In addition to this sum, \$25,000,000 is to be used for subsistence homesteads.

¹⁶ Wood, *THE HOUSING OF THE UNSKILLED WAGE EARNER* (1919).

The value of restrictive measures depends on how high their standards are and how well they are enforced. But every additional requirement of larger yards or larger rooms, or more plumbing, or greater fire protection, adds to the cost of building, which is passed on to the purchaser or renter. Rising standards, therefore, necessarily mean higher costs and higher rentals and a decreasing proportion of the population able to live in new housing.

It must be remembered, too, that a standard which has been set for new building cannot be applied to already existing buildings—especially where there are a great many of them—if costly structural alterations would be involved. And yet such buildings may last for a great many years with continued injurious effect on the families living in them.¹⁷

In European countries, where their housing problems hit them earlier and harder than ours, they arrived many years ago at the realization that private enterprise was everywhere making a failure of housing the low-income groups, and, to some extent, the middle groups. Earlier than we, they were convinced that for its own sake, every child was entitled to grow up in physically wholesome surroundings, and that the state had a very real interest in seeing that he did so. The line of reasoning was much the same as that applied to free education or to social insurance. It was as often advocated by conservatives as by radicals, though usually with a different emphasis. Conservatives, for instance, have been strong for the encouragement of home ownership by government loans at low interest rate, long period of amortization, and small down payment. Radicals have generally preferred municipal housing. In other places, long-time loans to coöperative housing societies have been emphasized. For a generation or more, European housing of the working classes has tended to be handled as a public utility, on a self-supporting basis as far as possible, at the partial expense of the tax-payers where necessary.

It will be profitable to have a quick look back at the experience of Great Britain. The industrial revolution, which substituted steam power for hand power and factories for cottage work shops, drew the rural workers by tens and hundreds of thousands to the large towns in search of work. No housing was ready for them. No restrictive laws were in existence. Housing sprang up, mushroom-like, wretched in quality, jerry built, back-to-back cottages, crowded together, flat on the ground with no damp courses, lacking sewers, lacking water, with rents so high that the overcrowding was fearful. Some of that housing remains to this day, and forms the material for clearance schemes.

Harry Barnes, the historian of British Slum Clearance,¹⁸ dates the first stage from 1830. The situation was already recognized as acute. Dickens and Ruskin used their talents to arouse public indignation. In 1830 Edwin Chadwick launched his first report on the sanitary conditions of the laboring classes in the metropolis.

¹⁷ For an example, see note 2, *supra*. The windows ordered cut in the partitions of existing dark rooms by the tenement house law of 1901 were realized to be wholly inadequate, but were all that was obtainable.

¹⁸ BARNES, *THE SLUM, ITS STORY AND SOLUTION* (1931).

Years of great activity followed, marked by paving of unpaved streets, removal of refuse, installation of sewers, drains and water supply. In 1848 the first National Public Health Act¹⁰ was passed. A series followed, ending in the consolidation of 1875. In these acts, and in the local by-laws made under them, we have the British equivalent of our much-later tenement house acts and building codes—the whole realm of regulation by statute. The fact that such regulation, under the British system, could be by national act, instead of requiring state laws of limited local application, insured more rapid and uniform compliance with the standards adopted.

Even more striking was their earlier recognition of the obligation of communities to supply housing themselves, if not otherwise satisfactorily provided, and to demolish slums if and where necessary.

The first principle was embodied in an Act of Parliament in 1851,²⁰ regarded by the Earl of Shaftesbury as the capstone of his series of Factory Acts for the protection of workers. For, he argued, of what avail are good work conditions and shorter hours, or protection of women and children in the factory, if the worker and his family are at the mercy of the landlord in their home? So he authorized local authorities, in any community where working-class housing was inadequate, to build and rent working-class homes themselves. The idea was so far in advance of public opinion that for more than a generation the act remained a dead letter. Only one town, Huddersfield, built a few inconsequential cottages under it. During the eighties, however, while a Royal Commission on Housing was in session, the aged author of the Act convinced the Commission that it contained the principles necessary for the solution of the problem. It was accordingly embodied as Part III of the resulting Housing of the Working Classes Act of 1890,²¹ which is still the foundation of British housing law.

During the nineties British cities began to build working class houses on undeveloped land in considerable quantities. In 1909, such action became obligatory, and the pace was speeding up when the World War intervened and building stopped.

Meanwhile, another line of activity had been developing—slum clearance. This was where the humanitarian impulse was strongest. Slums contained the worst housing and ought therefore to be dealt with first. Liverpool tore down some slums under a local act in the middle sixties.

A series of Acts of Parliament, the Torrens Acts (1868-1882)²² empowered a local authority to require owners to demolish single insanitary houses or small groups of houses at their own expense. This was useful, but too much like a confiscation of property to be used in a large way. The Cross Acts (1875 to 1882)²³ on the other

¹⁹ 11 & 12 Vict. c. 63 (1848).

²⁰ 14 & 15 Vict. c. 34 (1851).

²¹ 53 & 54 Vict. c. 70 (1890).

²² 31 & 32 Vict. c. 130 (1868); 42 & 43 Vict. c. 64 (1879); 43 Vict. c. 8 (1879); 45 & 46 Vict. c. 54 (1882).

²³ 38 & 39 Vict. c. 49 (1875); 42 & 43 Vict. c. 63 (1879); 43 Vict. c. 2 (1880); 45 & 46 Vict. c. 54 (1882).

hand, permitted the compulsory taking of unhealthy areas by the authorities (after representations by the health officer and public hearings), with compensation, however, to the owners, accommodation at similar rentals to be provided for as many families as were displaced. Sometimes this led to rebuilding by the local authorities, sometimes by philanthropic societies, which put up model tenements. The Cross Acts became Part I of the 1890 Act, and the Torrens Acts, Part II. They also are still part of the basic law, though many times revised.

The expense involved to the tax-payers by condemnation awards always prevented any really large-scale application of Part I. In 1930, however, the Labor government then in power thought the time had come for putting all the force of the National Government behind slum clearance, and enacted a law²⁴ for that purpose, making it compulsory on all communities of 20,000 inhabitants and over to make surveys of their housing, showing all insanitary areas, and to submit plans to the Ministry of Health for their improvement or clearance within a reasonable time. Since then, the government has changed, and although lip-service to slum clearance continues to be paid, no real energy is being shown. At this distance, it would seem that brakes are being applied rather than accelerators.

British municipal housing before the War, except where slum clearance was involved, was on what was called an economic basis. That means what our RFC and PWA call self-liquidating. The rents paid interest and repaid the principal of borrowed money. They also paid for management, repairs, insurance and local taxes (rates). This could not be the case in slum clearance, because the acquisition of the slum property, with compensation to the owner, always cost more than rents could cover, if the same economic grade of tenant was retained. It was considered quite an advance when a provision was adopted that the owner was not entitled to compensation for any income due to overcrowding his tenants. In 1925 and 1930, more drastic steps were taken, denying the owner's right to compensation for a house declared insanitary by the health officer. He was entitled to compensation for the land only, and if re-housing was to take place on it, he could recover only its fair value as a site for working-class housing. Whether any instances exist of these provisions being fully carried out, I do not know, but they have undoubtedly influenced the size of awards.

Before the World War, the London County Council had built some 10,000 flats and cottages, while all other local authorities had built between 20,000 and 30,000. Only a small fraction involved slum clearance. But public opinion had been growing in force. A decent home for every family, had come to be accepted as a national requirement. The British system of volunteer recruiting during the war had led to wide-spread promises that the soldiers would have homes "fit for heroes" when they got back. It was not just a bonus offered to spur enlistment. It was a sincere expression of intention to right a great social wrong. The whole nation was behind the promise.

²⁴ 20 & 21 Geo. V, c. 39 (1930).

The task of fulfilling the promise was made unexpectedly difficult by the greatly increased cost of building at the close of the war. This was the reason for the use of subsidy in the 1919 Addison Acts.²⁵

The housing shortage was estimated as around a million family units. There was no question, for the moment, of slum clearance, but only of building the greatest possible number of new houses of high standard, as rapidly as possible, to be let at rents working people and low-income white-collar families could pay. The 1800 local authorities, urban and rural, in England and Wales, put up 176,000 cottages in garden suburbs, 8 and 12 to the acre, 5 or 6 rooms and bath. The houses were substantially built of brick or concrete, with slate or tile roof. Rents ran from \$3 to \$5 per week, including the local rates, or taxes, which in Great Britain are paid by the tenant.

The national subsidy was high. An economy wave and a Conservative government called a halt to further building under the Addison Act in 1922. The next year, however, insistent public opinion forced the Conservative ministry to enact a housing law of its own (Chamberlain Act),²⁶ providing a new, though decreased, subsidy to local authorities and a lump-sum subsidy to private builders who would put up small houses to sell. This second provision produced over 400,000 houses disposed of to lower middle class purchasers, including a few artisans. In 1924 a Labor ministry succeeded the Conservatives, and the Wheatley Act²⁷ was passed providing a more liberal subsidy to Local Authorities. A fifteen year program was adopted to build two and a half million working-class houses. Altogether, about 723,000 houses have been built by local authorities in England and Wales since the War, and about 130,000 in Scotland. Adding the houses built for sale under the 1923 act, it will be seen that about one and a quarter million homes have been built with government assistance. Building costs dropped to the point where houses could be let at \$2 to \$3 a week. In 1930, as already stated, a Labor ministry decided that the housing shortage had been sufficiently caught up with to permit the undertaking of slum clearance on a large scale.²⁸ Something like 100,000 houses a year for 10 years was contemplated, and building under the Wheatley Act was to continue also.

Unfortunately for the continuity of the program, the present Conservative Minister of Health, Sir Hilton Young, under pressure of economy again, has brought about the repeal of the Wheatley Act,²⁹ and talks of clearing slums at the rate of 12,000 homes a year instead of 100,000, and having it finished in five years. It all depends on the definition of a slum. He is endeavoring to stimulate the building of working-class houses by private enterprise through government guarantees of mortgages held by building societies, the British equivalent of Building and Loan Associations.

²⁵ 9 & 10 Geo. V, c. 35 (1919).

²⁶ 13 & 14 Geo. V, c. 24 (1923).

²⁷ *Supra*, note 23.

²⁸ 15 Geo. V, c. 14 (1925).

²⁹ *Supra*, note 27.

This is not, of course, the end of British housing history, but it is the point reached at the present moment.

The legal obligation still rests on every local authority, urban or rural, to supply, itself, any deficit that may exist in adequate housing for the working classes, and to demolish and rebuild areas which endanger health. Liberal and labor groups are pressing to speed up work again. They claim that four million houses ought to be replaced in the next thirty years, of which at least a million are urgent, and that about a million additional houses should be built at the same time to overcome the excess of families over houses.³⁰

On the continent of Europe, there had been considerable housing activity before the War. There has been more since. Nearly every country has had some form of subsidized housing, some form of housing by public authorities. Nearly all has been building on new land. Slum clearance, though much talked about, has been practised very little. Germany has built about one and a third million working-class apartments since the war, but has not been clearing slums. This is true also of the 60,000 family units built by the City of Vienna.³¹ It is true of the work in Norway, Sweden and Denmark, in France, Italy and Belgium. It is true of the bulk of the work in Holland. But Holland and Great Britain are the two nations which have systematically attacked the problem of slum clearance. In proportion to population, Holland has done more post-war housing than any other country, having built for about one fifth of her people. Her favorite method is by 50-year loans, at the interest-rate of government bonds, to coöperative housing societies of working men or clerks, who are going to live in the houses when finished. She also has municipal housing for still lower paid workers, but regards it as residual. When her new building caught up with the post-war shortage, in 1926, she began a systematic destruction of insanitary houses and groups of houses. As in Great Britain, there are alternate waves of housing energy and of economy. In both countries a well developed public opinion insists on a wholesome environment for every child and therefore for every family, and enough has already been done to put the goal within reach of the generation now living.

In summing up this European experience, it may be said to prove that it is possible for public authorities to produce large quantities of good-standard housing on low-cost land to rent to fairly low-income groups at the expenditure of a moderate subsidy. Where slum clearance is involved, the case is different. Slum clearance has been demonstrated up to a few thousand houses. It has never been carried out on a really large scale. It has been planned on a large scale in Great Britain only. The difficulties involved are very great. The much-quoted provisions of British law governing compensation for slum property do not seem to have overcome them.

For weal or woe, it appears to be at this most difficult and relatively untried point, that we in the United States have elected to begin our constructive activities. If

³⁰ SIMON, *THE ANTI-SLUM CAMPAIGN* (1933).

³¹ Some of the finest of these have been battered to pieces by artillery in the recent disorders.

we succeed, great will be our reward.³² But the chances of non-success are undoubtedly multiplied.

So far, the State of Ohio³³ has passed a law permitting county housing authorities, and the counties which include Cleveland, Cincinnati and Toledo have organized under it. Michigan³⁴ has enacted a law which has given Detroit a municipal housing authority. Maryland³⁵ and New Jersey³⁶ have state housing authorities. Milwaukee is able under former legislation to carry on municipal housing.³⁷ New York State has passed an enabling act,³⁸ and the City of New York has just created a housing authority under it. All these and a number of others on the way³⁹ expect to do slum clearance and re-housing with funds supplied from Washington. The next thing, as the High Command is understood to have put it, is to make the dirt fly.

³² The fundamental question of whether the taking of slum property for clearance by eminent domain is a public purpose is still to be tested in court. Where bad health or delinquency conditions can be shown to be involved, it seems reasonable to expect a favorable decision.

³³ Ohio Laws 1933, H. B. 19.

³⁵ Md. Laws 1933, c. 32, at 152.

³⁴ Mich. Pub. Acts 1933, no. 94, at 118.

³⁶ N. J. Laws 1933, c. 444.

³⁷ Wis. Laws 1921, §1771b, Wis. STAT. (1929) §180.04 (8).

³⁸ N. Y. Laws 1934, c. 4, p. 185.

³⁹ Housing authority bills are pending in Delaware, Illinois, Massachusetts, South Carolina and West Virginia.

HOUSING THE POOR: MIRAGE OR REALITY

CAROL ARONOVICI*

Forty-eight states and some eight hundred cities have their covetous eyes trained on the hundred or more millions of dollars which have been made available by the United States Government under the Public Works Administration for new housing. These cities without exception contain within their borders every type of slum and shack town which years of neglect of housing legislation, indifference to the demands for low-rental dwellings, and speculative real estate and building enterprise could create in the course of a century.

For the moment there is a new hope in the hearts of housing reformers that at last this country will follow the splendid examples of the European countries and pause to consider the wage earners and their right to a decent dwelling place. With the market of high-rental housing overstocked, over-capitalized, and increasingly non-productive, reviving a dead building industry and saving the land speculator and the non-productive slums from the sheriff's hammer becomes a new passion with the realty interests. In the meantime bankrupt municipal governments which derive from 80 to 90 per cent of their revenue from real property are taking the land speculator and the tenement owner at their word and are placing heavier and heavier burdens of taxation which must be passed on to the renter if the whole structure of the real estate market is to be prevented from collapsing about their ears.

The present situation might be briefly summarized as follows: There is an overwhelming amount of high-grade housing which, although badly planned and out of keeping with the most modern ideas of group planning, still could provide improved accommodations for hundreds of thousands of families. These accommodations, however, are not within the reach of the people who need housing most, and there are not enough people in this country with sufficient incomes to absorb the available dwellings renting at high rentals.

Housing legislation intended to bring the lower-cost housing within the regulatory control of law-enforcing bodies so as to insure better standards has produced

* B.L., 1898, Roumania; B.S.A., 1905, Cornell; Ph.D., 1911, Brown. Came to U. S., 1900. Director of housing, California State Commission on Immigration and Housing, 1919-20. Lecturer at Brown University, University of Pennsylvania, University of Minnesota, University of Washington. Now lecturer on Urbanism and Director of Housing Orientation Study, Columbia University. Consultant on city planning, housing, and housing legislation. Editor: *The Community Builder*. Author: *The Social Survey; Housing and the Housing Problem*, 1920; *Architectural Control*, 1928; and comprehensive city plans for many cities.

only limited improvements in the new buildings, and has acted on the whole as a deterrent in the construction of low-rental housing, while encouraging the continued use of obsolete dwellings in existence prior to the enactment of the new dwellings laws. What has amounted to a legally enforced reduction in the building of new low-rental dwellings has kept up the demand for the old houses which, inadequate as they were, still met a need. Wholesale slum clearance without immediate or even predemolition replacement at all times threatened a housing shortage which kept the authorities from enforcing even the moderate regulations on old dwellings for fear that too much pressure would result in higher rents and greater congestion.

A disorganized and ever zealous realty business, bent on banking upon our continued rapid growth of population and confident in the power of advertising, has invested fabulous sums of money in real estate enterprises which had no relation to the developed suburban areas, which in terms of increasing population could never be occupied even under conditions of the most optimistic forecasts of population increases in the course of this century. Nor could the luxury housing be absorbed by any means other than a revolution which discounts incomes and turns over property rights to the government to be used on a communistic basis.

Is it any wonder that under these circumstances of business anarchy, the building industry is a mere shadow of its former self and that most of the 1,250,000 workers in the building industry are sharing a virtual dole with the unemployed architects and engineers, most of whom would otherwise be walking the streets?

If the building interests of this country had consciously been working for a revolution they could not have succeeded any better, except that revolutions imply fundamental philosophy, some reasonably well-thought-out objective, some shift of advantage from one class to the other. This, however, was a revolution brought about by unsound business methods, by entrepreneurs and speculators who still cling to their old ideas and methods with the result that they have carried with them into the mess the whole building industry which had served them so well during boom times.

The Place of Government. When the collapse could no longer be denied (it long had been a reality), our rugged individualism in matters of finance gave way to a call for government help. This, however, was merely a form of wishfulness which was not able to take the place of solid and courageous thinking. The catastrophe finally became so obvious that even the national government had to recognize it and act. The Home Loan Banks and, more recently, the Home Owners Loan Corporation, were set up to save the foolish and over-ambitious investors including the banks. But these institutions, endowed with public moneys but without the powers to act constructively, have failed to stem the tide.

At last came the Public Works Administration with its billions of dollars, and the raid began. Every conceivable undertaking which would produce work was devised, and even housing was given a new lease of hope when \$200,000,000 was

made available for housing. This amount finally dwindled to \$100,000,000 which is presumably at the disposal of the Housing Division of the Public Works Administration for housing purposes. Some other amounts had already been made available by the Reconstruction Finance Corporation to enterprising real estate promoters for housing, most of which when built will be out of reach of the lower third of our wage earners.

More recently under pressure from real estate interests and in particular from organized investment companies like the banks, the insurance companies, the mortgage companies, the efforts of the government to meet at least in part the needs for housing the lower-income groups has been nailed to the cross of slum clearance. This is the last resort of the *avant gard* of the slum owner, the investor in dead mortgages, and the hereditary slum owners. It is designed to save the skins of those who have been exploiting the slums as a matter of sound business practice and to keep the supply of housing down to the present level so as to avoid competition in quantity of accommodations, if not in quality.

Owing to the complexity of slum clearance due to legal difficulties of assembling and condemning land, it was necessary to create official housing authorities which would have the legal right to deal with property owners on the one hand and with the federal government and credit organizations on the other. The achievement of the National Public Housing Conference in securing legislation for such authorities is beyond praise. It may be the beginning of a country-wide movement for public housing, but for the present the path of these public housing authorities will be marked by skirmishes and battles in which every vested interest in present-day housing will join with the politicians in sabotaging their work. In fact the sabotage has already begun in New York State where legislation has been drafted to offset any constructive effort of the local housing authority. Such proposed legislation includes a change in the liberal definition of what a slum is, as contained in the new law providing for a Municipal Housing Authority.¹ Proposals for legislation are also being drafted which are intended to stifle action in selecting the types of slums to be cleared and to limit slum reconstruction strictly to replacement of dwellings actually demolished and no more. These are just the beginning of the wearing-down process which the enemies of low-rental housing will continue to practice.

Difficulties of Slum Clearance. Slums represent built-up areas, the accommodations of which are overtaxed and in which the buildings, their equipment, and the general character of their surroundings are out of harmony with recognized minimum requirements for common decency in privacy, health, and leisure-time use. Since most slums are intensively built up, the capitalization and assessed values of the land and buildings involve high land cost, compensation for buildings, and expenses in the assembling of parcels of land and the demolition of existing buildings.

The slums are not usually concentrated in one particular place but represent

blights covering various parts of communities, each with its own claim to distinction and each with its special character of population deserving assistance in housing. In the course of the last few months promises have been made that slum clearance will take precedence over all other housing efforts. Each section of the community, sensitive though it may be about being designated a slum, is eagerly awaiting its redemption through slum clearance. What a rush there will be for the pork barrel when the housing authorities begin their canvass for desirable land! What disappointments are awaiting them!

The sum of money available is not only insufficient to make a perceptible impression upon the slum problem of the cities of the United States, but it is not even sufficient to make a reasonably adequate demonstration of what could be accomplished should more funds be made available. With cost of land ranging between \$6.00 and \$20.00 per square foot in New York City slums plus additional compensation for buildings, and even with less costly land and buildings in other cities, it would still be impossible to build homes for the families paying five or six dollars a room unless interest rates were reduced to a minimum and land were taken at prices which would constitute virtual confiscation. Anything short of such revolutionary methods will fail to clear our slums, and the whole movement of the present day will again loom like a mirage in the desert of constructive and far-reaching achievement in housing.

The Slum Dweller Clearing the Slum. While reformers, financiers, politicians, and earnest social workers are struggling with the intricacies of the conflicts between the need for clearing the slums and the economic problems involved in protecting vested interests and rehousing low-income groups, slum clearance of a different order is going on. The slum dwellers are leaving by the thousands in search of better accommodations in outlying districts. In the last decade Manhattan Island has been deserted by about one half a million people. The boarded-up tenements are silent evidence of this mass exodus. The 187,000 families represented by this exodus involves a group loss to Manhattan of between 40 and 50 millions of dollars per year in rent alone, besides losses in trade. This same movement of population away from the slum centers is taking place in most of the 96 metropolitan cities of the United States, but particularly in the ten largest population centers such as Chicago, Philadelphia and Detroit.

Of course this is not slum clearance in the true sense of the word, but when property becomes unproductive a new use must be sought, and if such use does not exist within the present social and economic set-up of our cities, the exodus of the slum dwellers will, therefore, come as a free gift to the communities without publicly financed clearance.

This is exactly what took place in Europe, where so much modern low-cost housing has been built. Instead of trying to overcome the legal and economic difficulties involved in condemnation, low-cost housing was built in the outlying areas, leaving

the slums to clear themselves by the mere process of voluntary vacating on the part of the tenants who were afforded the opportunity to occupy, at reasonable rents, the new housing.

In my recent study of European housing enterprise, extending over a year's time, and covering the important cities of France, Germany, Holland, Belgium, England and Italy, I recall but few cases of slum clearance. None of these was of any magnitude, except in Rome where they had archeological motives and motives of civic improvement of a grandiose nature.

Once we provide decent housing within reach of places of employment, the slums will vanish by the sheer weight of their obsolescence, and with them, the burden of taxation and mortgage interest rates which can for the present be extorted from helpless slum dwellers who can find no other place to go at the rental rates which they can afford to pay. There is no need for legal condemnation proceedings; economic condemnation will suffice to achieve what all the laws in the land have failed to achieve in a century of muck-raking, sentimentalizing, and agitation.

Rental Resources. Rentals can be calculated only in terms of incomes. Low rentals worthy of the name must take into account the ability of prospective tenants to meet their housing cost in reasonable relation to their other needs. Let us see what the maximum rental resources of the wage earners of this country should be. The year 1929 marked the highest average wage scale in American industry. With 210,959 manufacturing plants in operation with 8,838,743 workers employed and a payroll of \$11,620,973,000 the average yearly wage was \$1,315. This average is the highest in the history of American industry and is more than twice as high as the average yearly wage for 1909. We should not assume, however, that every worker in industry received this amount of wages. It must be remembered that there is always a considerable turnover in all industry and that this varies between 10 and 25 per cent or more. Thus, individual workers are not always employed full time, in which case the average income calculated in total number of workers having a relation to a given industry would be materially reduced.

Assuming, however, that at this high-water-mark of employment the average wages are representative of the normal wages of industrial workers, it is clear that the monthly wage would be \$109.15. Recognizing the usual proportion between wages and rents at a minimum of 20 per cent and a maximum of 25 per cent, the rentals which these wage earners could pay would range between \$20.45 and \$27.28 per month. This calculation is, of course, on the assumption that all of the workers were employed full time, that there was no turnover and no reduction in wages due to illness.

Since 1929 there has been a steady decrease in both number employed and in wage-scales as well as total wages. The last available figures show that in 1932 the manufacturing industry of this country has decreased 54 per cent, while transportation, agriculture, mining have decreased 40, 46 and 60 per cent respectively, with the

construction industry cut 72 per cent within a three-year period. This cut in the construction industry applies to a slightly higher extent in the case of residential construction.

Housing Shortage. Based upon the normal increase in the population of the United States, there is a need for an annual construction rate of 300,000 dwellings. If we take account of at least a one per cent obsolescence per year, the 30,000,000 dwelling places of the country would yield another 300,000 of obsolescent homes which need to be replaced. Assuming that half of the population of the United States live in the 257 cities for which construction figures are available, the annual requirement for new dwellings in these cities alone would be at least 300,000.

With reference to actual needs, overproduction began in a small way in 1922 and grew to considerable proportions by 1928. But this year-by-year oversupply began to be balanced in 1929, and the overproduction of the previous seven years was canceled out with amazing rapidity in but two years' time. 1930 saw the balance struck. At the end of 1933 the cumulative deficit in the normal rate of construction amounted to 800,000 dwelling units, the construction of which would involve an investment of about four billion dollars. As this period of depression continues we shall be faced with a housing shortage which will be two or three times as great as that of the post-war period.

This, of course, does not mean that all dwellings are rented now. On the contrary, there are thousands of luxury dwellings which stand idle because of luxury rentals which tenants are not able to pay. There are also hundreds of thousands of dwellings which have reached a state of obsolescence and dilapidation and have had to be abandoned because they no longer meet the minimum requirements of the low or the lowest standard of decency demanded by even the poorest of the people.

It is safe to say that the present shortage in low-rental housing needed to take care of the lower-income groups of this country could be met only by an investment of 30 to 40 billions of dollars and that it would take five years of employment of the whole building industry with all its present organization and machinery and all the workers in building trades to supply the housing needed at the present moment.

Where is Building Needed? The population of the United States has been moving about and trying to find new and better living conditions than were afforded by the congested slums or the small towns in which industry and living conditions afforded less advantage than the larger population centers. Nearly half of the people of the United States live within the precincts of the 86 metropolitan centers, yet most of the congested areas have been losing population to the surrounding territories within the general sphere of metropolitan influences.

We have been talking of the need for decentralization, and the process of this decentralization has been going on apace, but it has been towards the periphery of great agglomerations of population rather than toward the open country or the independent small community. It has tended rather to populate the outer fringes of the

great metropolitan centers. In New York, Chicago, and other large cities this is where housing can find its best market, and also in these outlying areas can land be secured at sufficiently low cost to make low-rental housing possible. It is only after this has been achieved that it will be possible to bring lands fit for housing in large cities within the range of land prices suitable for low-cost housing. Under present conditions this is quite impossible.

However, there is and always will be a heavy residue of population which although unable to pay high rentals must or desires to remain in the center of our large cities. For the moment there is no possibility that they can be afforded new and high-grade housing. They will have to be contented with the old buildings, unless the government is willing to meet the difference in the cost between what they can pay and what they need in order to live decently. In fact from 80 to 90 per cent of the people in our cities will for a long time to come have to live in the old buildings. There is therefore only one method of improving the conditions of these houses and that is rehabilitation under some broad scheme involving private investment or government financing, either by subsidy or by liberal loans.

It is a fact that at present many of the slum areas are reasonably well equipped with schools, churches, water, gas, sewers, and other services. These represent a large investment which could be salvaged by improvement of the houses. Otherwise, while the deserting population would have to secure these services at heavy cost, existing services in the city slums would have to remain idle as, indeed, many of them already are found to be in New York and other places.

The problem for the moment is therefore one of providing new housing where the population is seeking new places in which to live and of rehabilitating old housing in the congested areas where rehabilitation is possible and can result in materially improved conditions. Where improvement is impossible because of the degree of obsolescence of the buildings, the only use for the land would be found in the creation of much needed open spaces which would enhance the value of adjoining properties as places of habitation.

The Government Policy in Housing Finance. So far the Housing Division of the Public Works Administration has not come forward with any constructive plan. The changes in policy have borne the earmarks of pressure from vested interests as pitted against the sound judgment of Robert D. Kohn, the Director of the Housing Division, who has had to withstand the criticism of the reformers who were impatient for action, and the political influence of the banks, the insurance companies, the mortgage companies, and others fearful that a liberal policy in federal aid for housing might leave the slum owners holding the sack.

A careful study of the present set-up of the federal government in housing finance presents several outstanding difficulties. If loans are made to private undertakings the interest rate to be charged by the federal government, the rate of amortization of the loan required, and the growing difficulty in securing tax exemption, makes

private building impossible if the lower-income groups are to be housed. If to this we add the high land cost which prevails in cities and the inability of private enterprise to invoke condemnation powers, it becomes obvious that any private loans for housing made by the federal government could be used neither for the building of cheap housing nor for slum replacement. It is simply a means of resuscitating the building industry, affording work to the unemployed, and perhaps adding more dwellings to an already overstocked market of high rental accommodations.

In an analysis which the writer made last October of a housing scheme intended for low-rental families, it was found that, with the government interest and amortization rates, only the higher rungs of wage earners could be housed on one dollar land in New York City. With the new wage scales and the increase in building material costs, this set-up would work out less favorably today than it did four months ago. It is only where land could be secured at a negligible price, where tax exemptions could be obtained, and the amortization of loans extended over a much longer period of time than is required by the federal government, that housing financed by it under private auspices could approach the higher rung of the well-paid working classes. An examination of the projects already approved by the federal government and the rentals which will be required will show at a glance that they cannot be classified as housing for the lower-income groups.

The loans to municipalities under municipal housing authorities are more in line with present-day needs, but even these fall short of the practices which have proved successful in European countries where cheap land was used and where the interest rates ranged as low as one per cent with long terms of amortization. However, the outright 30 per cent grants on labor and materials which the federal government has offered to municipal authorities is an important factor where land costs are low. As soon as the land costs rise above one dollar per square foot, the grant dwindles till it amounts to about 10 per cent when the land cost reaches ten dollars per square foot. The power to condemn land and buildings which is vested in the housing authorities may prove of value in some cases, but the practices in the United States would hardly inspire confidence in that method of acquiring land at a cost lower than the highest market or even speculative price.

It is strange that the policy of the Housing Division of the Public Works Administration was accepted as final. No one raised the question as to the adequacy of the proposed financial set-up; no one wished to do more than secure a slice of the millions which the government was prepared to loan. It is only recently that some thought has been given to the matter of reconciling the minimum needs of the lower-income families with the amount that they can pay. The result has been a growing skepticism as to the value of the whole federal finance scheme in terms of low-rent housing.

The problem as it stands today is not how we can reduce low-rental housing to the lowest possible level of decency and comfort but, assuming the sincerity of the

federal authority, to discover by what methods federal funds could be made to serve the interests of those who, although self-sustaining, are able to pay a minimum of rent. It is idle to say that the people should get more wages as long as conditions are as they are. The housing problem must be solved, if at all, by a more liberal policy of government finance.

What Should the Federal Housing Policy Be? The whole of the architectural profession, in so far as it is capable of originality and skill in reducing building costs, has been at work trying to bring housing construction for the lower-income groups within the range of possibility. They have failed and will continue to fail, because all the facts of costs are against them. There is only one alternative left, and that is a fuller recognition on the part of the government that it will have to bridge the gap between wages and rents by a more liberal use of public money. This means not only a larger amount of money to be devoted to housing, but also that loans should be made on better terms. There is no reason why government credit should not be granted at two per cent even if the rate paid on government bonds for housing were three per cent. On a billion dollars this would only amount to ten millions of dollars a year, an insignificant sum when compared with the many commercial outright subsidies granted to shipping or the airmail service. This amount of money would be reduced annually by the amount of amortization till it amounted to an insignificant sum when looked upon in the light of the vast federal budget.

If to this reduced interest rate were to be added the advantage of a long period of amortization of the building cost, and if the land cost were to be left out of the amortization requirements, something approaching low-cost housing could be built. This would provide work, retire from the Civil Works ranks many unemployed architects, engineers and skilled workers, and bring the building industry back to some kind of normal functioning.

Unless such a liberal policy is put into operation, there is every reason to believe that the stage for better housing has been set with much ado but that nothing is to come upon the scene.

Another way in which the Federal Government could be of service is in offering outright subsidies to private interests, either for the rehabilitation of old dwellings or the construction of new housing. These subsidies should be so calculated as to meet the difference between required rentals and the rent-paying capacity of the people most in need of housing. The English government has devised a method of subsidy whereby it pays regularly a part of the rent while the tenants pay the balance. Thus they can secure better housing at rentals consistent with their incomes and in harmony with their minimum needs. This would not work in this country, perhaps. It would not be out of the way, however, for the federal government to set aside a sum of a half a billion dollars as an experiment in housing subsidy and to lend this money to private individuals ready to invest in housing.

By offering one quarter of the cost of a dwelling to a private individual we should

be able to stimulate investment in housing which would soon bring into the market three times the amount of money for housing. Thus we should increase housing accommodations, increase the opportunities for employment and bring into profitable use idle money which is now kept in the vaults of our banks and insurance companies or in the proverbial stockings of those who cannot find an outlet for their cash in any kind of safe investment. We have enough information and experience to know that housing for the lower-income groups cannot be made to pay, unless the housing is of low grade or the government is prepared to meet the loss. Why not face the issue and decide whether we want better housing at any cost or are merely talking and quibbling to keep up our satisfaction with good intentions and to fool the workers into expecting relief which will never come?

URBAN HOUSING AND LAND USE

HERBERT U. NELSON*

An impression has spread that, in our great altruistic surge toward better housing and toward decent living places for the low-income groups, the principal opposing influence has been what is often enough referred to editorially as the selfish real estate interests. In this paper I have been asked to give the point of view of those interests.

The truth of the matter is that the surge toward a new day in housing began to rise, markedly, some time before the depression. It has back of it the whole real estate and construction industry. It is the life-force of the industry. Real estate boards have consistently opposed the method of governmental subsidy where subsidized projects would overload a neighborhood and further disorganize local values.

The point of view of real estate has been this: You cannot bring in low-cost housing or take out slums, in a way that is economically sound, unless you attack the job in the light of the city's whole need: its whole housing problem, and its whole problem of land use and land values.

National Policy Should Aim At Creating Instruments

The past months have been too much given to a discussion of projects, projects, projects. I think we will all admit this. We have yet to devise broad general means which would clear the way for a general advance. The coming months will be critical in this respect. There is every indication, as this is written, that a first chapter of federal housing history has already closed. It is seen that what was expected back in June of 1932 is not going to take place. The allotment of funds under the plan written into the National Industrial Recovery Act has not produced and evidently in our present state cannot produce equity money for projects capable of meeting the requirements of the Act.

With federal housing policies now being shaped for a new outlet it is surely well to consider what the objectives of such a policy should be. There may be indication of what is ahead in a copyrighted Associated Press story of February 19 dealing with a projected major federal study of housing under four cabinet members. This study is announced as concerned not with the hundred million dollar Public Works Emer-

*Secretary and Manager, National Association of Real Estate Boards, Chicago, Illinois. Formerly organizer and secretary of the Minneapolis City Planning Commission. Mr. Nelson's proposals for a national housing program, here given, are, except where so stated, to be considered his own personal views and not in any sense a commitment of the Association.

agency Housing Corporation fund or with new PWA allocation but with facilitating and giving direction to the expenditure of from thirty to forty billion dollars of private funds in the field of housing in the next ten years.

I submit that the most valuable assistance that the federal government can give to the whole great social movement for sound housing conditions is not through individual demonstration projects, however well conceived, nor through direct loans for individual projects, however socially desirable. It is rather through the development of helps which *only government* can give, through setting up instruments for very broad general use. It could, for example, organize the means of a permanent capital supply. It could open great new areas of information. It could set up methods through which we could use coöperative effort. A national housing policy can organize our existing strength for a new advance, find ways to overcome existing major difficulties, give the means and the instruments for constructive action by the people of each community. Such a national policy is not only proper to government. *It is government.*

Primary housing questions include: (a) cost reduction, (b) flow of financing, (c) control to balance supply and demand, and (d) legal devices to secure maximum human values. The housing problem is thus far larger than the scope chosen for this issue of *Law and Contemporary Problems*, and it is *all one problem*.

I assert that the most direct, soundest, even quickest way to bring about decent housing for low-cost groups, (or to solve the tough problem of slums and blighted areas) is through a national program to meet *the whole* housing problem. Only so can we go ahead with a clear sense of direction, without enormous new dislocations and waste.

The bigger job is the easier job, because it is not artificially pulling up one segment of our existing social and economic structure; it is giving the whole structure a chance to rise. It is using natural forces to make such a rise come naturally. Such a program would cost us some clear national thinking. In dollars and cents the expenditure required would be comparatively little.

As the foundation stones for a sound national housing program I propose:

- I. A central mortgage discount bank, to coördinate the whole mortgage system of the country, securing a stabilization and a cost-saving which such centralization alone can give.
- II. An agency (to be created either through the federal government or through coöperative action of the real estate-construction-financing industry) which would establish accurately the essential facts in each locality as to mortgage risk,
 And
 Available to this agency, or part of it, an agency which would establish for each community the essential facts as to supply-demand.
- III. New legal machinery (and business devices) through which we might draw much further than we have ever yet drawn on the principle of coöperative action to

- (a) Bring run-down areas back into condition for residential use, replat them, rule out adverse use.
- (b) Extend to tenants benefits arising from coöperative endeavor.
- (c) Make the home unit part of a planned neighborhood.

With these three foundation stones of a national structure I think it could be universally agreed that there should go:

IV. Modernization of the tax system to remove present handicaps against housing advance.

It may here be said that within the last year we have seen the first fairly comprehensive tax modernization programs designed definitely to this end written into our state laws.

Where the Waste Now Is. To recapitulate what has become a commonplace of discussions such as this, present excessive or prohibitive costs of good housing and home ownership are principally these:

First, (by universal assent) over-high financing costs.

Second, over-high land-utilization costs. (Arising from poor grouping; excessive street area; failure to differentiate between investment and speculation; etc.).

Third, disorganized condition of the home building industry. (Failure to utilize pre-fabrication, mass production, economical new materials or methods, vertical organization of the industry, etc.)

Fourth, demoralization of the tax system, both as to state and local direct tax and as to special assessments.

Fifth, poor planning in the large sense, a sense larger than is in the control of any single individual. Evidenced in: poor correlation between supply and demand, over- and under-building; failure of zoning laws or building ordinances to reach their objectives; over-subdividing, with its huge cost to the community for unused streets, sewers, and the like; hodge-podge growth, resulting in blighted districts unable to support their governmental costs, a burden on the tax payer at large, and so on all home and property ownership.

My four-stone proposal for a federal housing program covers every one of the great factors now operating to produce over-high housing costs, save only one, our technological medievalism in housing, our failure to use what we already know in our building methods and business methods. Correction of that factor, surely, can quite safely be left to private initiative. It will come into line almost on the instant, once the other factors are met.¹

I. SEPARATE SYSTEMS FOR LONG-TERM CREDIT

The proposal for a federal system of long-term credit banks to unify the mortgage structure, made as early as May 1931 by the National Association of Real Estate Boards, is exactly parallel with the proposal for twelve new discount banks ("intermediate credit banks") for loans to small industries placed before President Roosevelt

¹ Experimentation, in new materials, new processes, mass methods, is going on now, behind closed doors, in almost every major manufacturing industry concerned with home building.

(February 21, 1934) by Eugene R. Black, governor of the Federal Reserve Board.² The Black Plan is avowedly to bring needed federal help, financial and legislative, to set private credit in motion. It is premised on the theory that any real recovery must be financed by private credit, not by "easy money." Such a premise applies strongly to low-cost housing.

The whole profound disorganization of our mortgage structure during the depression came essentially because of this fact: It was founded on the ability of the individual to *pay on demand*. That is a false foundation. We have failed to found it on its true basis, the ability of the underlying property to *sustain sound use-value* over a long period of time.

Our financing system is a historical, not a logical growth. We have habitually intermingled, in our banking practice, funds that for any safety should have been kept liquid and funds that properly and for most profit should have been placed in long-term investment. Because the two were tied together, when the crash came we could not call out our short-term funds, we could not borrow against our long-term funds. We lost faith in our bankers; our bankers lost faith in us. Credit collapsed. Values collapsed.

We face, still, a situation in which there is no present financing available for any type of new construction.

Commercial banks, in this crisis, were sustained in great measure through the Federal Reserve system; building and loan associations through the Home Loan Bank system; both, in addition, (with insurance companies) through the R. F. C. But none of these agencies is open for discounting on the individual mortgage, however sound. The earth tremor shook each mortgage obligation as a unit, and many fell.

The Federal Mortgage Discount Bank would introduce what engineers would call a cantilever principle into mortgage financing. It would operate much as the cantilever principle operates in Wright's revolutionary design of the Imperial Hotel in Tokyo. In time of tremor, the structure would move on its own base, but would not collapse.³

Surely any national plan for the creation of shelter calls, once and for all, for a separation of long-term and short-term credit in our banking structure. I believe that this simple act of separation would set up such security as would draw capital into new housing enterprises to whatever extent social need or new advance in living standards might incite such projects.

² It is in line, also, with the earlier proposal of Frank A. Vanderlip for a general long-term credit system for all industry.

³ The remarkable work of the Home Loan Banks, two of which are already on a dividend basis, would give a start infinitely more valuable than any theory. The plan proposed is in line with the whole Federal policy for reorganization of commercial banks.

In time of panic, savings should flow *into* a Federal mortgage discount system, not *out* of it, because the system would have back of its bonds a major portion of the urban land resources of the country, unquestionably our most permanent and stable single capital resource.

We cannot segregate one group of mortgages, one group of financing institutions, one group of housing projects, and hold that little group safely against economic collapse. The depression has taught us that. Low-cost housing, unless it is to draw one hundred per cent on federal funds universally from this time forth, will find its clearest path to financing the broad general path, through a general federal mortgage discount corporation or other federal mortgage bank.

II. PROPOSAL TO RATE COMMUNITIES ON THEIR MORTGAGE RISK

We have talked a long time about the over-high cost of mortgage interest. We have done little to establish, factually, what mortgage risk is, what interest rates should be. I should like to see set up, as a second foundation stone for a national housing structure, a national risk-rating agency for housing loans, as proposed recently by Mr. J. Soule Watterfield, Chicago, president of the new National Association for Better Housing.

He suggests that there be created a national bureau or laboratory similar to that which for years fire insurance underwriters have had in operation to gauge the risk of insurance and so establish its cost. The underwriters' laboratories give each city a schedule of insurance rates based on the risks run *in that city*. Each community is credited for the number of its fire-stops, debited for the number of its shingle roofs, and so on. The city with a good fire department, for example, gets a lower general rate than the one with a poor department, *in proportion to the lower risk involved*. Inside their base rate for the community, rates are established for various types of buildings. The building which is a low hazard gets a low rate.

It should be possible to set up a similar laboratory through which to measure the factors which condition the risk of a mortgage loan, and through which we might establish for each community base schedules for mortgage interest rates in proportion to the risks which home ownership or mortgage lending encounters in that community.

Such a laboratory might raise such questions as the following: Has the town a good zoning ordinance, one that is an actual and adequate protection to real estate values? Does the town have a good building code? Does it have an honest administration of the building code? Does it have a building department that makes adequate inspections? Is the special assessment system equitable? Are foreclosure and redemption laws disadvantageous to mortgagee? Are the laws such that primary liens are liable to be thrown ahead of a mortgage unexpectedly?

Shifting neighborhood uses have, in our past history, been the biggest single element of the lender's risk. The proposed laboratory would ask whether the town has huge blighted areas or areas that threaten to become blighted.⁴

Clearly the proposed laboratory would need, as its very first equipment, data to

⁴A good school system would count as a decided factor for stable real estate values in a community. Good health protection would have some weight. The question of adequate recreation facilities would enter in, but would be more remote.

indicate the existing supply in each city of each type of structure, the amount of vacancy in existing structures, and the recent trend of new demand. It would need access to the findings of such a real property inventory as is now being made. Surely having once undertaken such an inventory, we shall never again fail to make the same kind of examination periodically. If a detailed study of demand and supply is not continued through the Bureau of Foreign and Domestic Commerce, then it must be undertaken, to some degree, jointly or severally, by every agency which seeks to measure mortgage risk.

It would be advantageous, and would probably be found necessary, to have the risk factors measured for each neighborhood of the city as well as for the city as a whole. Inside the base rate there would be rates for individual structures.⁵

The fire underwriters' laboratory has brought a tremendous pressure on each community for acceptable fire protection measures. Local authorities *act*, because what they do means millions of dollars to the citizens of the community in lowered costs for fire insurance.

Establishment of a rating agency for mortgages would, in the same way, bring a gigantic economic pressure on municipal officials to give their people lower risks for mortgage financing and home ownership. When good zoning enforcement, good building inspection, protection against shifting land use, mean dollars and cents to the people of the city in their interest rates or in the selling price (discount rate) of their mortgages, we shall have, for the first time in this respect, a concentration of force upon city administrations for constructive action.

The question arises: What agency should carry on such an undertaking?

The job proposed is a vast job. There always is a danger of political pressure creeping in to affect the findings of a governmental agency. On the other hand, the federal government may be the only agency through which such an undertaking, in its broadest scope, is at present feasible. The Housing Division is a possible locus. The federal real property inventory, analyzed by the Bureau of Foreign and Domestic Commerce, has in it the germ of the whole attempt. Certainly a federal mortgage discount bank might make tremendous use of risk studies, and might itself set up a risk-measuring system. It might go as far as to say, "We will discount paper from town A at a base rate of 80 per cent, paper from town B at 60 per cent," etc.

The new National Association for Better Housing, the first agency we have ever had for coördinate action of architects, engineers, materials manufacturers, contractors, builders, realtors, financing agencies and social agencies in the field, has before it a proposal that it go to work, at once, on the outline of a mortgage risk-rating

⁵ For individual structures (or neighborhoods) these things would count: adequate transportation, adequate public improvements and service, proper neighborhood planning, protection through deed restrictions, protection through community control of architectural design. Sound construction, sound architecture would come in. But inquiry as to mortgage risk must address itself primarily to fundamental social factors.

The proposal I am making has, thus, little in common with any plan for "certification" of houses themselves, primarily on their physical characteristics, as a grade A, grade B or grade C mortgage risk.

bureau. A rating bureau might be supported by joint action of the various lending agencies. These might act through their national trade groups, or through their respective code authorities.*

III. NEW LEGISLATIVE MACHINERY TO REVERSE PROCESS OF DECAY

(a) *Coöperative Neighborhood Reconstruction*

I propose as the third stone in a national housing structure such enlargement or modification of our laws as would authorize group action of the property owners within a given neighborhood to re-zone, re-plat, rebuild or otherwise reconstruct the neighborhood so as to enhance its quality as a home neighborhood.

We have, now, no legal instrument through which owners in a "blighted" or "slum" area can come together, in a practically effective way, to change the character of the neighborhood. Zoning laws, at the best, protect only against new invasions of adverse use. They give no lever through which the people of a district may, by majority coöperative action, throw out an adverse use. Theoretically, eminent domain may be invoked. Practically the whole PWA search of past months for suitable rehousing projects on which to loan showed how fatally over-expensive is the ancient method of condemnation as a means of assembling land in a given district for re-platting or re-planning.

I believe, enthusiastically, with Louis Brownlow, Director of the Public Administration Clearing House, that the real unit of home planning can no longer be the individual home. It must be the neighborhood. I believe, second, that the individual single family dwelling, rather than the multi-family structure, is the prototype of good housing and of good social planning. I believe, further, that coöperative endeavor is as sound in housing as it is in mutual insurance or banking. Tying together these three convictions, I have offered in some detail one proposal for reversing the process of urban decay.

The crux of this plan, which has had some discussion under the title Home District Plan, is its proposal to extend the police power to properly constituted new neighborhood units set up in such a way that they may, under equitable conditions, wipe out adverse use.

The proposal is, essentially, to convert present diverse ownerships within an area into a new form of corporate ownership. Action might be on vote of possibly 75 per cent of the property owners owning 75 per cent of the area affected. This new coöperative ownership unit, under supervision of a state or local housing authority, could properly be given quasi-public powers. It would, in fact, partake of the

*Agencies who could act thus include investment banks, mutual savings banks, building and loan associations, real estate mortgage companies, and possibly mutual insurance companies. As a matter of fact, the life insurance companies are already attempting something of the kind, each on their own account. For example, a leading national authority on real estate appraisal is now making a survey of various cities for the Prudential Company, essentially so they may know where it is safe to lend on mortgages.

nature of a subordinate unit of government. It would be set up in somewhat the same way as a public utility corporation.

As part of a program of slum clearance, the federal government or the municipal housing authority borrowing from the federal government might very properly be authorized to purchase directly the first lien bonds of such a Home District.

Whatever may prove the successful lever for raising blighted areas, we can no longer afford to think of our existing housing, including our owned homes, as astronomers for a long time thought of the cosmos—as a system continuously and inevitably running down. We must search for a way to set our slums, our still-born subdivisions, our ordinary hodge-podge neighborhoods, on the up path. One very valuable Public Works housing project might very well be the development of a model state law helpfully outlining a legal device for empowering proper units to rule out adverse uses and effectively replan present blighted areas.

(b) *Extension of Coöperative Principle Through New Forms of Tenant-Participation*

We have still to find a workable method to do what limited dividend corporations originally were proposed to do: provide decent housing (*not necessarily new housing*) for the low-income group. I believe that we might devise forms of action which would bring to tenants in this group the benefits of the coöperative principle.

We cannot expect sound housing projects through spontaneous coöperative action by this and that knot of people for their own housing. Sporadic groups of people who might naïvely band together for such action do not know how to achieve a sound project. They do not know real estate, do not know construction, do not know the quirks of the legal structure involved, do not know real estate financing. But I believe we might utilize the coöperative principle through *people who do know* how to create a successful project, in ways such as this:

There might be set up by a group of citizens (acting without salary, as is now done in organizing a building and loan association) a Coöperative Housing Society, which, drawing on practical and experienced organization and management, might (1) buy or build apartment buildings for rental; (2) develop single-family home areas. The plan would be such as to retire the capital in approximately 20 or 30 years, providing, every year, a small "undistributed dividend."

In the case of apartment buildings every tenant, at the end of each year of occupancy, would be credited with his share of this "dividend" for that year. He could not draw out his dividend, but in case he incurred sickness or unemployment and could not pay his rent the amount would be available and be applied to cover his current rent bill. If he moved from the apartment the accumulated "dividend" would have a certain cash surrender value, such as is given life insurance policies. Persons remaining in a building conducted on this coöperative principle might accumulate sufficient coöperative interest in the building's earnings to assure them,

after a time, rent-free quarters over a considerable period in the building or in another of equal quality under the same Coöperative Society.

If the Society developed a group of small houses it might rent them under a somewhat similar plan. Such a rental plan would have some of the features of a 20-year endowment insurance policy, and should lead to complete ownership.

A plan of this general type would open up true coöperative housing of a practical kind. The difficulty of ascertaining what the risk would be is not so great as that overcome by insurance companies in establishing their risk tables.

(c) *Development of Home Ownership to Include
Neighborhood Control*

I believe in coöperative housing. I believe that under urban conditions, conditions too big for any small home owner to buck alone, we need a new type of home ownership—some form which would include in effect coöperative ownership of the whole neighborhood.

The purchaser in a high-grade subdivision gets something like this when he buys his lot, through the restrictions imposed upon his neighbors in perpetuity, and through the community control set up over neighborhood areas dedicated to parks and playgrounds. But the isolated home owner, who goes out on a forty foot lot and builds a house, has no way of buying a sphere of influence around his little holding. Further, he has no way of spreading the risk which he undertakes, including the risk of encountering a bad builder, the risk of refinancing—or, for that matter, of financing—the risk of unexpected special assessments. If, on the other hand, he were part of a large coöperative agency, such, for example, as the Home District above proposed, he would be buying what he wants to buy,—a dwelling, plus a livable neighborhood—and he would be sharing his risk with many people.

I believe that for the average-income group in the future, coöperative housing, probably in various forms, is the way to satisfactory living. It will take leadership and skill to develop methods. The end is worth the effort.

IV. MODERNIZATION-OF THE TAX SYSTEM

As the basis for a modernization of the tax laws to give a better situation for home ownership and good housing generally, I propose this 6-point program, which has been suggested for state action by the National Association of Real Estate Boards:

1. State control of local tax levies and bond issues, under proper safeguards.
2. Limitation of the property tax by state constitutional provision.
3. Spread of school costs to a wider tax base.
4. Expenditure of funds from state gas and vehicle taxes upon city streets as well as upon rural highways.
5. Restriction of use of special assessments for financing public improvements.
6. Consideration of the income or use value of property as one of the major factors in arriving at a fair assessment for tax purposes.

Widening of the tax base and transfer of school costs in greater measure to the state are perhaps the leading present tendencies in the great wave of state tax legislation of the past year and a half. The movement for all-over tax limitations, frankly a forcing measure to bring widening of tax base, has already gained tremendous momentum.

Current Rush for New State Legislation

It is perhaps natural that in attempting, as we must, to ride two horses at the present time, reëmployment and low-cost housing advance, we have, in our governmental policies, yielded rather over-much, for a time, to the demands of the emergency. It is not strange that in formulating any national policy on the question of low-cost production, for years in a state of flux, we have first had to develop some understanding of the real problems. This has been true of all of us, federal officials, local officials, groups of citizens interested in social advance, the economists, the legal minds who must be called on to implement any program, the technological investigators, and individuals and organized industries all down the line engaged in the production of homes and housing.

First aftermath of the federal housing policy as sketched in the National Industrial Recovery Act was a series of legislative rushes to set up state housing laws under which "easy money" could reach the local communities, and a concomitant rush of projects attempting to get under the Act. It is now found that the emergency-made state housing commissions have not brought their cities the hoped-for federal money. We are, therefore, in for a new set of legislative rushes. This time they are for municipal or other housing authorities which can be given 30 per cent federal grants. Unfortunately for any thoughtful evolution of long-term housing policies, the available 30 per cent grants to public housing projects, advertised in every discussion, became inevitably the focus of public attention. For the purposes of the emergency there must, of course, be discussion of how states may get into the race for that 30 per cent federal money. But I think we may agree that we expect, and have a right to expect, that our leaders give thought—and their major thought—to consideration of how any housing authority, or housing administration, may safeguard against costly incidental dislocations, and go after permanent needs. If we let that available 30 per cent warp either our projects or our long-term policies, the cost is likely to be high.

Housing may look like a problem in "urban pathology." It is rather a problem in constructive urban physiology. We must, eventually, get away from a federal housing dole and set housing activity on its own feet, justifying itself to its own banker backing on the basis of its own economic soundness. Blood transfusion from the federal veins may be necessary to start normal processes going again. I believe that the aim of our national housing policy must be to set up a system through which blood transfusion will not be needed every day.

THE REGIONAL APPROACH TO THE HOUSING PROBLEM

EARLE S. DRAPER* and TRACY B. AUGUR**

The "housing problem" is so generally associated with life in cities that it is difficult to think of it in any other terms. Basically it is not a problem of life in cities, but of life wherever it is lived. It is the problem of securing shelter of a type that meets the needs and the means of those that seek it. It is associated with the means of living far more closely than with the place of living. For that reason any attempt to localize it—to say that it is a New York problem or a Chicago problem or an Atlanta problem, a city problem or a rural problem—is missing its real challenge. The problem is to bring together satisfactory facilities for shelter and the means of livelihood that will support them. It does not particularly matter *where* they are brought together, so long as they exist at the same time and in a convenient and usable relationship.

Mankind is constantly seeking new means of livelihood as old ones fail, or cease to satisfy. It was that urge that carried settlement across the continent and that started the great drift from farm to city. The housing problem goes always with the population, westward or cityward, or in any new direction that people take in search of a living. What new direction that search must take to give fresh opportunity to those now without means of self support, is a question on whose answer hangs the real solution of the housing problem.

There is a serious housing shortage in the United States today due to the curtailment of construction during recent years, but it has been concealed by the doubling up of families and the continuance in use of thousands of unfit dwellings that should have been scrapped long ago. It is rendered doubly serious by the fact that much of the existing housing now in use, both good and bad, is in the wrong place. To the social dangers arising from overcrowding and the occupancy of unfit habitations is added the economic danger of having millions of citizens housed where there is

* B.S., 1915, Massachusetts State College, Amherst, Mass. Studied and traveled in Europe, 1922. Director of Land Planning and Housing, Tennessee Valley Authority. Pioneer landscape architect in southern states. Author: *Southern Textile Village Planning, Landscape Design in the South*. Contributor to numerous periodicals.

** B.A., 1917, Cornell; M.L. Arch., 1921, Harvard. Chief, Regional Planning Section, Tennessee Valley Authority. In general city planning practice since 1921. Consultant to Detroit City Plan Commission, summer of 1933, in connection with slum clearance project. Consultant to the Housing Division, Public Works Administration, till joining staff of Tennessee Valley Authority.

no hope of future employment that will give them decent living. Temporary hardship and discomforts can easily be borne if the future holds some promise, but a hopeless future will break the hardiest spirit—and wreck the strongest nation. Therefore the present emergence of housing in the public consciousness becomes significant, not because of the re-discovery of slums or the admission that their clearing is a public responsibility, but because of the official interest of the Administration in what lies back of slums, and in the economic order that has produced them. The growing willingness to attack the whole problem of modern living, and not just the housing phase of it, is the hopeful sign. It is only by such a broad attack that housing may be dealt with successfully.

It is obvious that such an attack can be made on nothing less than a regional basis. The improvement of housing conditions does not consist in the mere rebuilding of houses or neighborhoods that now are obsolete, but in their replacement by new building operations, which may more properly be undertaken fifty or a hundred or a thousand miles away from the old site than upon it. A city's housing difficulties arise more often from the necessity of housing more people than its opportunities for livelihood can decently support, than from a demand for shelter that really overtaxes the supply. So the solution of the difficulty is more apt to be found in the removal of the surplus population to points where they can afford a decent living than it is in building more and better houses for the people where they are.

In seeking a sound regional approach to the housing problem, we may profitably re-examine the simple proposals of Sir Ebenezer Howard, who with a similar approach, looked beyond the English slums thirty-six years ago to the things that had produced them, and who proposed a remedy that fits the situation that we face today as well as it did the English situation then. England at the close of the last century had become predominantly urban, after long being predominantly rural, for the simple reason that machinery had released manpower from the farms and furnished employment in manufacturing instead. It was no longer necessary for so large a part of the population to work in agriculture, and agriculture no longer offered the opportunities of other forms of industry. The factories, for reasons more important then than now, found urban locations advantageous, and the cities became the seats of opportunity, drawing population from the rural areas and building up congestion and overcrowded housing. The means of livelihood was the controlling factor in the situation, and where it was, the need for housing followed. It made no difference that healthful and commodious homes in the country stood deserted, or that spacious building land lay idle all about the manufacturing centers, just out of reach. The people lived where their work was; they had no other choice.

Howard realized the futility of trying to turn the movement back toward the farms when there was no economic need for a large farming population. He also realized the futility of trying to re-make the great cities into something really fit to live in, for they had already gone too far in the other direction. So he proposed to

direct the population movement, not back to the farms nor into the obsolescent cities, but into a new type of community that he called a Garden City.

These communities were to absorb the population released from agriculture instead of allowing it to be engulfed in the spreading bulk of the overcrowded centers. But they themselves were to be prevented from becoming overcrowded by limitations on the density of settlement and on the ultimate size to which each town might grow. In order to remove the usual tendency to ignore and over-ride such limitations, the actual land ownership and construction of each city was to be placed in the hands of a limited-profit corporation which would build in the interest of the future inhabitants instead of for their exploitation. Each town would be expertly planned from the outset, located on a carefully selected site, and built according to the best and most modern practices, which included, in Howard's scheme, a protective belt of open land around each city. Each town would have, because of its close association with the surrounding country and the open character of its development, all the advantages of rural living. But in addition it would contain the industrial and business opportunities of the city, and the social benefits to be derived from life in an urban community.

What Howard proposed was a solution of the housing problem, not by building model tenements or workers' suburbs, but by taking the population before it reached the slums and giving it housing facilities of a far superior sort in close association with the means of livelihood that would support them. Instead of a London steadily becoming, as Patrick Geddes has since described it, "more and more of worse and worse"—of a London constantly spreading and getting more congested, and providing poorer and poorer living for its people—Howard pictured a greater London made up of a central city with satellite communities added about its borders to accommodate its growth. Each satellite, each garden city, would be separated from the others by belts of open land for farming or forests or recreation, and each would be a complete social and economic unit within itself, yet all would be connected by road and rail, and help to support in the central city those larger enterprises of commerce or industry or culture for which the individual satellites might be too small.

The picture therefore was not merely of a new type of city, but of a new type of region, of a new population pattern and a new relationship between the people and the land they occupied. Instead of wide deserted rural areas on the one hand, and great hopeless blots of population on the other, there would be a dotting of small industrial communities in the midst of rural land, bringing into close and harmonious relationship the pursuits of agriculture and manufacturing and commerce and, most important of all, healthful, contented living. The garden cities would bring to rural areas new markets for their crops, new opportunities for part time employment, and new centers of social and cultural activity, and so in addition to providing a new type of environment for city life would improve the rural environment as well.

Such, sketched very briefly, was the Garden City Idea; but it did not remain just an idea. London and Liverpool and Glasgow went on growing in the same old way, and no revolution took place in the mechanics of city building; but the idea did take root, and so strongly that within a few years an Association had been built up about it with capital enough to acquire a site and begin the construction of the first Garden City of Letchworth, thirty-five miles from London. Unlike many ventures founded in a burst of zeal over some social or religious dogma, the new Garden City grew and prospered, until today it is a well established city, providing for some fifteen or sixteen thousand people exactly what Howard hoped it would provide—an opportunity for happy, healthy living coupled with diversified employment. On the strength of its success a second Garden City, Welwyn, was started eighteen years later, not far from Letchworth, and it too has established itself firmly among the communities of England.

Now in the United States we are facing a tremendous housing problem—but it is not alone a problem of houses. It is a problem of finding for millions of people a form of livelihood that will afford them shelter, as well as food and clothing and the amenities of life. It will avail us nothing to build new houses where there is no prospect of employment to support them. Nor will it do any permanent good to enter the big employment centers and rebuild where the multiple mistakes of a metropolis make good housing unattainable.

We are facing the situation that Howard found in England, but in a later stage. We are not witnessing the drift of population from farms to cities, but the results of it, results that have produced abominable housing in every city of the land and in addition have so upset the economic balance that the future seems to hold little hope of more than partial and insufficient livelihood for many of those who flocked cityward during the past several decades. Obviously this is not a problem to be solved city by city or slum by slum. It is part of the national economy, and as such must be tackled on a national scale. Because sound solutions will ignore city limits and metropolitan areas and state lines, and deal with people and their relation to the land and its resources, the problem is distinctly regional in character.

Several angles of the New Deal program indicate that the housing problem is being approached from this regional standpoint by the Administration. The Subsistence Homestead movement and the recently announced policies of the Relief Administration are distinctly along this line, and the great Tennessee Valley experiment in regionalism, although not specifically linked to housing, inevitably embraces it within its scope.

Whatever the popular conception of "subsistence homesteading" may be, it is obvious from the actions and statements of those directing this Federal enterprise that a bare means of existence for the homesteaders is not the goal, but rather a means of supporting a full, well-rounded life. Persons stranded by the closing of mines or mills that formerly employed them, families unable to make a living in big

cities, farmers on lands that will no longer yield them livelihood, are being colonized in new communities that offer decent shelter, a chance to produce food for the family needs, and enough employment in industry or commercial agriculture to support a simple but comfortable life for all. The colonies created out of the Subsistence Homestead fund are frankly experimental and set up as demonstrations, but similar measures appear to be contemplated on a larger scale under the program of the Relief Administration for the coming year, announced at the end of February.

The Tennessee Valley Program is different in conception although its objectives are broadly similar. Instead of being a country-wide attack upon a few specific problems, it is an attack within a specific region on all the problems of an integrated social and economic structure. It deals with the whole of life and with housing as an essential part of it. It aims at the gradual achievement of a planned regional economy, rather than the emergency solution of certain pressing problems of the moment.

The Tennessee Valley is the largest and most distinct region that has as yet been given official recognition in this country. It extends into seven states, covering the watershed of a great river and all its tributaries, and embraces a wide diversity of resources;—agriculture of all sorts, from the cotton fields of Alabama to the high plateau farms of the Cumberland and Blue Ridge Mountains; timber resources; rich deposits of coal, iron, copper, zinc, bauxite, feldspars, marble, slate, limestone, phosphate rock, and other minerals; and great developed and potential sources of water power. It has a greater wealth and diversity of basic resources than any other region in the country, and could not offer a firmer basis for the building of a sound economic structure.

The Valley also embraces all types and conditions of housing, both good and bad. The best and the worst in other sections have their counterparts in this great area. There are slums in its cities, and dilapidated, insanitary houses on its farms, to the same degree that such conditions are found everywhere. The Valley is not lacking in the need for better housing, nor in the unemployment and poverty which there as elsewhere have kept bad housing on the market. It is ideally suited for a demonstration of a housing method that couples good houses with means for gainful occupation through which people may afford them.

The Tennessee Valley Authority, created by Act of Congress in May 1933, is not set up as a housing agency, nor is it engaged upon a housing program. But it is charged, among other things, with making surveys and plans "for the general purpose of fostering an orderly and proper physical, economic and social development of the Valley," and may be authorized by the President "to make such studies, experiments or demonstrations as may be necessary and suitable to that end." In its first major construction operation—the building of the Norris Dam—an opportunity arose to make a housing demonstration that would fill a definite place in the development of the Valley program. As a result there is now rising near the dam the new

town of Norris, a town in which good housing will be coupled with industrial, commercial and agricultural employment to furnish wholesome living to several hundred families.

The building of the Norris Dam called for the housing of a large part of the labor and supervisory force near the site, for the two years or more that the work would consume. Rather than spend large sums on temporary dormitories, houses, shops, sewer and water systems and the other facilities of a large construction camp that would have no lasting value, the Authority early decided to build in a form that would contribute to the permanent well-being of the area. The town of Norris will therefore serve a dual purpose, at the outset housing personnel connected with the building of the dam and associated operations, but gradually introducing during the construction period enough industries and other employment opportunities to help absorb labor released when the dam is finished. The first unit of the town, now nearing completion, will house some two hundred families, but the utilities and basic town plan are designed for expansion to a population of four or five thousand people. The repair shops for the construction work are located to serve as the nucleus for an industrial section; the poultry, dairy and truck farms needed to supplement the local food supplies for the large construction force will remain as part of the town's agriculture; the new highway that brings supplies to the construction job will form a scenic and utilitarian link from Norris to the railroads on the west and to Knoxville, twenty miles to the southeast. In short every feature of the construction operations that could be given permanent utility by being incorporated in a permanent town was so designed. And as a protection to the new community from the shack colonies and speculative sub-divisions which ordinarily arrive to exploit the labor on the job and the gullible back home, a wide protective belt has been acquired completely surrounding the town area with farm and wooded land that will be kept open in perpetuity. The entire site of about three thousand acres is being developed as a single entity, and under one central control.

When the Norris Dam is finished, bringing enlarged resources of cheap power to help develop the natural resources of the Valley, the town of Norris will be ready to demonstrate the advantages of combining new industries with new housing in new communities planned for modern living. It will demonstrate what the Garden Cities of England have demonstrated, that the diversified employment opportunities and social advantages of urban life can be enjoyed in a rural setting, and that the small town, properly planned internally as well as in its relation to the country about it, can offer most, if not all, of the benefits that come from life in big cities—without its disadvantages. It will be greatly helped in this demonstration by one of the points it holds in common with the Garden City, namely that the land on which it is built has been bought at acreage prices and will be held in trust for the community—which is another way of saying that the town is being built to provide a new and finer type of urban environment for the American people and not to furnish speculative profits for land exploiters.

The town of Norris is the outgrowth of a construction operation. It is not an indication of a housing policy, nor is it essentially a model community. But it is strong evidence of a desire on the part of the Tennessee Valley Authority to attack each of its many problems with the single broad goal for which it was created; the evolution of a way of living in the Valley that will assure to every citizen a decent habitation, wholesome surroundings and an opportunity to enjoy them through the fruits of his own labor.

Other problems lie ahead, holding similar opportunities to deal with housing as part of the regional life, and to demonstrate in various ways the methods by which people may be enabled to secure and keep good homes. The building of the Norris Dam will form a reservoir flooding some seventeen hundred farm and village houses. Several hundred more will be rendered inaccessible, or their supporting farms will be cut off by the reservoir, so that around two thousand families will be forced to move by this single operation. A major housing problem is presented there; again not merely a matter of housing, but of the re-establishment of life for people forced to give up their homes, their accustomed mode of living, and all their old associations.

Some of the displaced families will make their own adjustments, and buy new farms or homes with the money paid them for those they now possess. But readjustment is not simply a matter of settling on new farms. Farming alone does not offer any guarantee of a reasonable living. Many of those who will be displaced are now making little more than a bare existence. If they are to be enabled to enjoy the fuller life that the proper development of the Valley is expected to bring them, they will have to be furnished gainful employment in addition to their farming, or helped in the selection of the best among the available farm lands, and in their operation in a profitable way.

This presents an opportunity for constructive planning, and for the intelligent re-housing of hundreds of families in such relation to their surroundings that they will be enabled to afford good homes. It is a problem that calls for a regional solution, and a knowledge of all the factors of regional development, lest re-settlement take place in the path of some future reservoir that is part of the Authority's program, or in a locality whose access to markets will be cut off by changes in the highway system, or on lands that are sub-marginal in character.

Other parts of the Valley program will seek to introduce into rural communities new gainful occupations to help stop the drift of the younger generations away in search of jobs, and to bring to these communities, through the magic of cheap electricity, the modern conveniences and the opportunity for local industries that now are lacking.

These items in the work of the Tennessee Valley Authority are not cited as a complete program, but as instances of the regional approach, which alone is broad enough to meet the housing problem of today; the problem of helping people to

find an adequate living and a fit living place where both may be enjoyed. The full program of the Authority is still in the making. It claims no discoveries or magic formulas to solve a problem that has been with us since the world began. But it does recognize that the housing problem has constantly become more involved with the progress of modern civilization, and that it is increasingly beyond the power of individuals to cope with for themselves. And so good housing, instead of being discussed in terms of better bathrooms or less congested tenements, is given its proper place in the regional economy, to be achieved as part and parcel of that "more abundant life" which our national resources are fully able to provide if properly directed for the public good.

HOUSING AS A POLITICAL PROBLEM

ERNEST J. BOHN*

European governments have for many years been interested in the clearance of slums and the providing of adequate housing facilities for the low-income groups of their population. With the exception of a few crusaders, Americans have not generally accepted housing as being a proper governmental function.

When federal funds were made available for slum clearance and low-cost housing, America was totally unprepared to take advantage of the availability of these funds. In characteristic American style, groups everywhere decided that "there should be a law." Therefore housing laws were introduced and enacted in nearly a score of states. Public housing authorities were set up in many localities. Having enacted these laws and having attempted to operate under them, we find ourselves two years later with the construction industry still flat on its back, slums worse than ever, and the low-income group without decent housing facilities. Since money is available and since "we have a law," why has not the problem been solved?

The availability of federal funds for low-cost housing and slum clearance is said to have been made possible through the New Deal. Yet the Emergency Relief and Construction Act of 1932,¹ passed during the administration of President Hoover, provided, in setting up the Reconstruction Finance Corporation, that the R. F. C. be authorized "to make loans to corporations formed wholly for the purpose of providing housing for families of low income or for reconstruction of slum areas, which are regulated by state or municipal laws as to rents, charges, capital structure, rate of return and areas, methods of operation and to aid in financing projects undertaken by such corporations which are self-liquidating in character."

All this before the talk of the New Deal. The availability of R. F. C. funds was due to the desire to put our unemployed millions to work and to the recognition of the fact that the building trades were hit hardest of all groups of workers. The authors of the Act recognized that if the artisans employed in the construction of housing could be put to work, the benefits of a public works program could be distributed to a far greater degree than by any other type of construction.

* A.B., 1924, Adelbert College, Western Reserve University, LL.B., 1926, Western Reserve University Law School. Elected member 88th General Assembly Ohio 1928. Elected member Executive Committee Cleveland Bar Association 1928. Elected member Cleveland City Council 1929-31-33. Chairman Joint-Council-Civic Commission on Housing 1932. Chairman the first National Conference on Slum Clearance (Cleveland) 1933. President, National Association of Housing Officials, Chicago.

¹ 47 STAT. 5 (1932), 15 U. S. C. A. (Supp.) c. 14.

The National Industrial Recovery Act was approved by President Franklin D. Roosevelt on June 6th, 1933.² It, too, provided that among the purposes for which money may be loaned by the Administrator are the "construction, reconstruction, alteration or repair, under public regulation or control, of low-cost housing and slum clearance projects." In Section 203-A of the Act it is provided that "with a view of increasing employment quickly" the Administrator is empowered to "make grants to states, municipalities or other public bodies for the construction, repair or improvement of any such project, but no such grant shall be in excess of thirty per cent of the cost of the labor and materials employed upon such project." Thus the thirty per cent grant that is made available for housing and slum clearance, the one item that makes housing for the *low-income* group actually possible, is made available in the very words of the Act to "increase employment quickly."

The federal government is primarily interested in low-cost housing and slum clearance because of a desire to put people to work rather than because of a motivating force to accomplish a great social benefit. It is therefore essential to educate and formulate favorable public opinion throughout the land to carry on the work that the federal government has accidentally begun.

Then arouse public opinion! And *all* public opinion must be aroused. Nothing *happens* in the field of social and economic improvement. Improvement comes only after years of struggle, and often bloody struggle. The first expressions of public opinion are local. First, we must arouse public opinion in favor of slum clearance and low cost housing in Cleveland, in Chicago, in Atlanta, in New York and in San Francisco before we attempt to arouse national consciousness of the good to be accomplished by the new idea. The public opinion so aroused in Chicago will exert itself in the enactment of local and state laws to encourage, make possible and, if necessary, force by governmental action, the reconstruction of our slums and the providing of adequate housing facilities for the poor. As soon as there is sufficient demand in localities and states throughout the country, and it becomes the policy of governments in the cities and the states, the clearance of slums and the providing of decent housing facilities will become actually a national program.

How can this public opinion be created?

For half a century the social worker has preached the shame of the American slum. For half a century the philanthropist donated either to education and propaganda or actually contributed to the cost of erecting experiments in better housing facilities. Sociologists have offered courses in the universities and many a doctor's thesis on involved phases of the subject has been written. Yet we still have our slums; the poor live in relatively worse housing conditions than ever. Yet, because of the rapid material progress of America, our standard of living has risen rapidly in other respects since the turn of the century. It seems to me that the only solution is actually to interest governments in the subject. Put housing into politics; force

² 48 STAT. 195 (1933), 40 U. S. C. A. (Supp.) c. 8.

your political party or your statesman to incorporate it in the platform. England has gone further towards a solution than any other country, and the reason for it is that housing is in politics. I have heard many well-intentioned, low-cost housing advocates express the hope that if slum clearance and low-cost housing were ever a reality, it would have to be kept out of politics. In other words, no governmental interference.

We must have one or the other. Either the government will participate in housing, and housing will be subject to all the abuses that other governmental activities are subject to; or, the government will keep out, and we shall have no solution to our housing or slum problems. If the City of Cleveland were to build a housing project in its 20th ward, it is very possible that an aspirant for the office of alderman would seek to gain the franchise of the tenants of the project on the ground that he would reduce their rent if elected, or that with the change of an administration, all the efficient janitors or scrub women might be removed from their jobs. But then, that is possible in any other governmental activity.

America is faced today with the task of improving its government, rather than keeping government out of activities it should be in.

If I will be pardoned for drawing upon my own experience, I shall show how one city and state did create public opinion for the enactment of local and state laws which will make housing and slum clearance a reality. This favorable public opinion is genuine because it has withstood disappointment after disappointment, finally to be rewarded with the actual beginnings of a long range program. Contracts have actually been signed.

For many years civic organizations, architects, city planners and others in Cleveland had studied the subject of slum clearance and housing for the low-income group, but never had the matter gotten beyond the academic discussion stage. True enough, the City of Cleveland had been doing something in the way of slum clearance through its condemnation of dangerous structures. From time to time the Anti-Tuberculosis League, the Fire Department, and the Building Department embarked upon a campaign of demolition. With a fanfare of trumpets, several dangerous structures would be demolished to prove that the government of the city was interested in slum clearance.

On May 23, 1932, I introduced a resolution³ in the City Council requesting the appointment of a Special Councilmanic Committee to study and make recommendations for the solution of the many problems arising out of the existence of our slum and blighted areas. The resolution was adopted and a special committee of five was appointed.

A series of public hearings was immediately begun. The first of the series was devoted to the study of the many social problems which arise out of the existence of slums. Social agencies were represented and the results of several surveys were discussed.

³ City of Cleveland, Council Res. No. 97934.

The second meeting was devoted to a discussion of the deterioration of property values and other investments. The possibility of a rehabilitation of these sections was discussed from an economic point of view as distinguished from the purely social problems involved. A pledge of coöperation was received from investors and banks.

The next session was devoted to an inquiry into the present condition of the building industry—an industry that would be practically at a standstill even if it were not for the present economic stress. Practically all of our large cities have all the office and public buildings, hotels, apartments, and homes needed for the high or intermediate economic groups, and, therefore, little or nothing remains to be built along the lines that this industry has been engaged in during recent years. The builder, architect and material man realize that building homes for the low-income group is the most important chance for the revival of their business, and, therefore, they pledged their coöperation to any housing project, not only by bringing down costs but by helping to finance such projects.

Another session was set aside for the discussion of European housing projects, as well as operations under the New York Housing Act. The building code was discussed, as was the subject of fire hazard from the point of view of the Safety Department, as well as from that of the underwriters.

One of the most important meetings was the one called for the discussion of labor problems. The President of the Federation of Labor was accompanied by heads of every one of the building crafts of which there are more than one hundred. After a discussion with them of the subjects of jurisdictional disputes, building code changes which may be made necessary by new construction methods, and construction costs, the labor leaders pledged their coöperation in carrying out a housing program. The action of these leaders was endorsed at a meeting of the members of the various crafts at the labor headquarters the following night.

At the very first meeting I made it clear to the community that everyone attending the meetings was to consider himself a member of the Committee and that every one had the right to participate in the deliberations and to help formulate the policies that were eventually to be adopted. Representatives were invited from the principal civic, religious, governmental, trade, real estate, investment, professional, social welfare, and labor organizations in the city.⁴

⁴ The organizations invited included the following: Civic: League of Women Voters, Chamber of Commerce, Federation of Womens' Clubs, Adult Educational Association, The American Legion, The Cleveland Foundation, The Citizens' League; Religious: The Cleveland Federated Churches, and The Catholic Diocese of Cleveland; Governmental: Board of Education, Juvenile Court, County Welfare Committee, City Plan Commission, Board of Zoning Appeals and Board of County Commissioners; Material and trade: Cleveland Builders' Exchange, The Portland Cement Association, The American Institute of Steel Construction, The Common Brick Manufacturers Association, The Lumber Products Bureau; Real estate and investment: Apartment House Owners Association, The Cleveland Real Estate Board, The Building Owners' and Managers' Association, and all the banks; Professional: The American Institute of Architects, The Cleveland Engineering Society and Cleveland Bar Association; Social and welfare: The Negro Welfare Association, National Council of Catholic Women, National Association for the Advancement of Colored People, The Anti-Tuberculosis League, The Cleveland Welfare Association, The Y. M. C. A., The Y. W. C. A., The Cleveland Health Council, The Association for Criminal Justice, The Associated Charities,

Before many meetings were held, the subject became the principal topic of discussion in the city. Every civic organization, every luncheon group, every church forum, and every radio station desired speakers to discuss this most interesting subject. Public opinion was being aroused!

As a result of these public hearings at which the subjects referred to, as well as other related matters, were thoroughly discussed and the coöperation of all interests was pledged, the Committee published its report recommending among other things the following:

The enactment immediately of housing legislation by the General Assembly of Ohio and by the City of Cleveland; that banks and other investors be called upon to recommend methods of financing housing projects for the low-income group; that architects, engineers, material-men, builders and craftsmen be called upon to submit plans and ideas for both individual and large scale housing for the low-income earning group; that real estate owners and operators recommend size and proper locations for sites for housing for the low-income group, bearing in mind the necessity for cheap land, as well as a desire to rehabilitate neighborhoods; that social agencies and the schools be called upon to devise new methods of social control that will be necessary and to educate the public in the fundamentals of good housing; that a study be made of the changes that are necessary to modernize and adapt to present conditions our building codes and the need for revision of ordinances governing stench, noise, sanitation and like subjects; that civic organizations, newspapers and the public be called upon to realize that slum clearance and the providing of housing for the low-income group is no longer an academic and theoretical subject for discussion; that with the coöperation of all persons and groups in the community a social rehabilitation of thousands of people can be accomplished, property values can be saved and stabilized, and work can be obtained for many in the building and associated industries by a program of self-liquidating construction.

The original Council Committee, augmented by those citizens who heeded its call and offered testimony and suggestions during the hearings, became the Joint-Council-Civic Committee on Housing and is recognized in the community as the central clearing house heading up the movement for slum clearance and low-cost housing.

The Emergency Relief and Construction Act of 1932 was adopted by Congress while the Committee was conducting its hearings. After a discussion of its provisions the Committee asked the City Council to adopt a resolution⁵

calling upon the Governor of Ohio to include among the purposes for which the special session of the legislature is soon to be called, the enactment of the necessary legislation providing for the creation of limited-dividend housing companies so as to enable such companies and agencies in Ohio to comply with the federal law referred to, and to obtain loans from the Reconstruction Finance Corporation to provide housing for families of low income and reconstruction of slum areas.

and the many social settlement houses; Labor and contractors' associations: The General Contractors' Association, The Allied Construction Industries, Building Trades Employers' Association, and The Cleveland Federation of Labor and all affiliated labor organizations.

⁵ City of Cleveland, Council Res. No. 98316.

Immediately, wheels were set in motion by the Committee to stir up sentiment throughout the state in favor of the enactment of a housing act. Governmental as well as civic organizations adopted resolutions of the same tenor as the one just referred to, and many private citizens throughout the state added their voices by sending letters to the Governor, joining with the City Council of Cleveland in requesting that he include in his call of a special session of the legislature the enactment of a housing act. The result was that, when the third special session of the legislature was called, the Governor amended his original call, and the legislature had its opportunity to enact a State housing act. In the meantime, copies of our report, favorable newspaper editorials, and letters were sent to the members of our State Senate and General Assembly, so that when the bill was presented, favorable opinion was pretty well crystallized.

Members of the Committee drafted a law based upon the New York Act but eliminating many of its provisions and in other ways adapting it to Ohio conditions. Suggestions from persons and organizations in other Ohio cities were considered, and whenever they were found beneficial, they were incorporated in the bill that was finally presented to the State Legislature.

The principal opposition to the bill came from an association of apartment house owners who were fearful that the building projects would increase the already numerous apartment vacancies. Their opposition continued even after it was pointed out that housing projects for the low-income group as contemplated here means replacement of totally inadequate housing with adequate housing for the low-income group, the group that they cannot and will not house.

The greatest opposition to the bill while it was being considered by the Legislature came from the Cincinnati Real Estate Board and from the State Association of Real Estate Boards. Their opposition to the bill came first because of our attempt to get it through a special session of the legislature and because of the provision conferring the right of eminent domain. The Real Estate Board of Cleveland, however, was favorable to the bill.

Something should be said here about influences universally at work in all legislative bodies. First, there is the influence of party organizations. As I suggested earlier, the promotion of housing and slum clearance has been regarded as being of insufficient importance—or, perhaps, of too much importance—to be included in the platforms of our major parties. Those of you who are interested in the enactment of housing legislation will receive neither support nor opposition from party organizations as such. The socially minded and progressive leader or “boss” of the party, legislature, or legislative delegation will help you if you ask him.

Next, there is the influence of the Chief Executive. Clearly in times such as these when the tendency is toward centralization of authority, the executive has even greater influence than ordinarily. Both the Limited Dividend Housing Law⁶ and

⁶ Ohio Laws 1932, 3rd Spec. Sess., H. B. No. 8.

the Public Housing Authority Law⁷ were enacted during a special session of the Ohio Legislature. Neither could have been considered by the Legislature had it not been for the Governor's willingness to include in his call for the special session the enactment of housing legislation.

Conduct your campaign from all parts of the state; make your demand universal, and your governor will help you. What governor can withstand the request for the enactment of housing legislation by a group such as I have just named?

Next, there is the power of organized lobby, and I am speaking of the legitimate lobby—the one which acts as a fact-finder for the legislator. Let me give you an example: Real estate boards have, on more than one occasion, opposed slum clearance on the theory that it destroys property values, that no lasting benefits can come from it, and that slum clearance merely means the moving of slums. The Ohio Association of Real Estate Boards has opposed slum clearance, as have real estate boards in most cities in Ohio. Realizing this, one of the first groups that I talked to about the program we had in mind was the Cleveland Real Estate Board. After presenting my arguments and asking them for their aid, I found the officials a group of very socially-minded and far-sighted persons. Let me quote part of a letter received from them:

We have been, for a number of years, endeavoring to find a practical way to work out that difficult area of blight, as well as slums. It is rapidly poisoning other parts of metropolitan Cleveland. The real estate, mortgage and dwelling designing problems involved have had our consideration but by no means are they the whole story. If the Council feels that under the pressure of present conditions they can begin a consideration of this program, which will take years to solve, you will find us "ready, willing and able" to provide the assistance resulting from our contact with this situation.

Needless to say, this offer of assistance was accepted, and on more than one occasion it was pointed out to the community that here was one of the most socially-minded organizations, not only in the city, but in the state.

We went to the State Capitol. The Governor included in his call for a special session of the Legislature the enactment of a State Housing Law. Our bill was in fairly good shape, and things moved very rapidly. The representative of the Cleveland Real Estate Board appeared before the Committee and urged its adoption, as a benefit to property interests. The bill was reported out of Committee and then, for the first time, the State Association recognized what was going on. The lobby became in earnest. Charges of railroading were made. I immediately asked the Chairman of the Committee to reconsider the bill, in spite of the fact that the Committee had reported it out favorably and was willing to stand by its decision. That took the wind out of the sails of the opposition. They were put upon the defensive. Their cry of distressed real estate was of no avail because the Committee had already heard, the day before, from the representative of the real estate board of the State's largest city, that slum clearance was the one solution for the rehabilitation of, and

⁷ Ohio Laws 1933, 1st Spec. Sess., H. B. No. 19.

the return of sound values to, real estate, though it might mean the wiping out of speculation.

I need spend little time in speaking of the influence of the newspapers. Everyone knows the enormous power that they wield. During our work we never 'scooped' a newspaper. Whenever we provided a story for the evening papers, we had a new story for the morning papers. Whatever action was taken, the newspapers were informed, and if there was some reason why the matter at hand should not be divulged, they were informed but asked to withhold publication for the time being. Very frankly, a request was made for editorial support, and it was forthcoming. Our project received unanimous editorial support in the large cities. Copies of editorials were sent to newspapers in small towns with the request for favorable consideration. Copies of stories and editorials, as well as other informative literature, were sent to the legislators so that when they arrived at the State Capitol, they had the matter pretty well in hand.

Another most important influence in legislation, of course, is the Speaker. Have the "gavel" with you, and you can often dispense with flowery orations. I well remember an incident that happened during the days preceding the passage of the Public Housing Authority Law. The Committee had reported the bill out favorably, and it was on the calendar for a certain day. The members of the State Legislature were in an ugly mood that morning. They had come down to the State Capitol hoping to have a very definite program available for them on a taxation matter. The program was not ready. Expenses of living at the capital were piling up without additional compensation. Bill after bill went down to defeat that day. Realizing what was happening, the manager of the bill requested that the bill be not considered until the next legislative session. The speaker agreed. The next day was calm—the sun was shining—a program was in the making, and the law in which we were interested was passed. Had the bill come up the day before it might have been defeated. Persuade the Speaker that your bill is a good one.

A most important thing to remember is that you can never be sure that your support will stay with you forever. An important civic organization of Cleveland approved and urged the passage of a limited dividend housing law. You might infer, therefore, that this organization was interested in housing and in slum clearance and would be in favor of any legislation furthering it. The Governor agreed very suddenly that he would include in his call for a special session of the legislature the enactment of a public housing authority law. The bill was drafted in a hurry and introduced in the State Legislature. I was home over that week-end and was requested to meet with the Committee on City Planning of this organization and explain the bill. The bill was explained, some suggestions were made, but the Committee approved and recommended that the organization support the bill—strictly in keeping with what was believed to be the organization's policy of supporting slum clearance. Several days later, however, another meeting was called of the Com-

mittee. The notice advised them that, although at a former meeting of the Committee it was voted to recommend approval of the bill, "further study by the Committee is feasible since action on this bill by the Legislature is not imminent." While this notice was being drafted and sent, the legislation was being adopted in Columbus, so that the following day the committee meeting had to be cancelled because, as the notice said, "House Bill No. 19, the so-called County Authority Housing Bill, has been approved by both the House and Senate of the Ohio State Legislature." What happened, of course, was this: although this civic organization was willing to approve limited-dividend housing, the conservative members were not ready, without a very long, deliberate, and careful discussion and analysis by its legislative and executive committee, to approve a public housing authority law. There are a lot of conservative people in America who are fearful that public housing smacks too much of socialism.

May I issue a warning to those states that have housing laws? Unless you are able very rapidly to demonstrate the social and economic value of those laws and carefully develop a sound and favorable public opinion, you are risking repeal of your laws at the next regular session of your state legislatures.

The object of this discussion has been an attempt to show that housing is not yet definitely an accepted governmental function; that federal money is available only because of a desire to alleviate unemployment. If there is a desire among us that government should concern itself in low-cost housing and slum clearance (and I believe that a solution is possible only if the government is so concerned by the giving of financial aid through a subsidy in one form or another) then favorable public opinion must first be aroused. I have tried to show by the experiences of Cleveland and Ohio how government can be made to interest itself in the subject, first, by enacting a limited dividend housing law, and then by a natural evolutionary process, a public housing authority law which makes low-cost housing and slum clearance very definitely a public function.

Finally, an aroused public opinion has carried us through all the disappointments until today Cleveland can report projects actually under way with the aid of government money. The failure or the success of these first experimental projects undertaken by the government will in a large measure depend upon the support that government receives from an intelligent public opinion.

THE DRAFTING OF HOUSING LEGISLATION

RALPH K. CHASE*

This article is limited in scope to a discussion of certain problems connected with the drafting of legislation providing for the carrying on of slum clearance and low-cost housing activities by "public bodies," and particularly by public corporate bodies known as "housing authorities." Before considering the detailed provisions of housing authority legislation, however, it is necessary to consider (a) certain prior state legislation relating to slum clearance and low-cost housing in which it may be desirable to integrate the housing authority act and (b) the applicable provisions of the Emergency Relief and Construction Act of 1932 and the National Industrial Recovery Act which gave housing legislation its recent impetus.

LIMITED DIVIDEND HOUSING LAWS AND THE EMERGENCY RELIEF AND CONSTRUCTION ACT OF 1932

Laws providing for the organization, operation and regulation of limited dividend housing companies were enacted in New York in 1926.¹ Similar laws were later adopted in twelve other states, principally because of the provisions of the Emergency Relief and Construction Act of 1932, which authorized the Reconstruction Finance Corporation, among other things, to

"make loans to corporations formed wholly for the purpose of providing housing for families of low income, or for reconstruction of slum areas, which are regulated by State or municipal law as to rents, charges, capital structure, rate of return, and areas and methods of operation, to aid in financing projects undertaken by such corporations which are self-liquidating in character;"²

At the time of the adoption of that act (July 21, 1932) only New York had a state housing law providing for the organization of corporations which could qualify under the above-quoted provision. Accordingly, the New York housing law, with more or less local variations in each case, was adopted in twelve other states and many limited dividend housing companies were organized to endeavor to secure

* S.B., 1922, Union, L.L.B., 1927, Harvard. Head of Legal Division of Housing Division of Public Works Administration. Formerly associated with Root, Clark, Buckner and Ballantine, attorneys, of New York City. Member of the New York and Massachusetts Bars.

¹ N. Y. Laws 1926, c. 823; amended: N. Y. Laws 1927, c. 35; N. Y. Laws 1928, c. 722; N. Y. Laws 1930, c. 872; N. Y. Laws 1931, c. 557-558; N. Y. Laws 1932, c. 507; N. Y. Laws 1933, c. 802.

² Act of July 21, 1932, c. 520, §20 (a) (4), 47 STAT. 711, 15 U. S. C. A. (Supp.) §605b (a) (1).

federal assistance in the financing of slum clearance and low-cost housing projects. The essentials of all such limited dividend housing laws are

1. Limitation of return to the amount contributed, plus interest or dividends at a rate not to exceed that named in the law, usually 6%;
2. Payment of all excess to the state; and
3. Supervision and control by a state housing board created for that purpose.

THE NATIONAL INDUSTRIAL RECOVERY ACT

The next step in the making available of federal funds for slum clearance and low-cost housing projects was the passage of the National Industrial Recovery Act³ which was approved on June 16, 1933. Section 202 reads in part as follows:

The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: . . . (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum clearance projects;

and Section 203 (a) provides among other things that

With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to states, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project;

Unlike the Emergency Relief and Construction Act the National Industrial Recovery Act, it will be noted, does not limit qualified borrowers for slum clearance and low-cost housing projects to limited dividend housing corporations. All that is required is that the construction, reconstruction, alteration or repair of low-cost housing and slum clearance projects be "under public regulation or control." Nevertheless the great bulk of applications continued to come in from limited dividend housing companies and in cases where there was no provision for the formation of such companies the limited dividend set-up was closely approximated, the limitation upon participation being secured by the creation of two classes of stock and the public regulation or control being secured by the loan agreement between the borrower and the United States.

Recently, however, the Federal Emergency Administrator of Public Works, Secretary Ickes, decided to entertain no further applications from private housing companies, and accordingly slum clearance and low-cost housing projects with the aid of Public Works Administration funds (at least for the time being) can be carried on only by (a) federal construction or (b) federal financing of projects to be carried on by public bodies.

³ Act of June 16, 1933, c. 90, 48 STAT. 95, 40 U. S. C. A. (Supp.) c. 8.

With the probable exception of a very few cities which appear to have power in their charters to engage in housing activities, no state, municipality or other public body was at the time of the adoption of the National Industrial Recovery Act specifically authorized to carry on any low-cost housing or slum clearance projects, and it should be emphasized that limited dividend housing companies, part of the income of which goes to the payment of dividends to private investors, are not public bodies within the meaning of that term as used in the National Industrial Recovery Act.

THE GENERAL LEGISLATIVE PROBLEM AND PRELIMINARY DETERMINATIONS

The immediate problem thus presented to state legislatures is quite simple: the enactment of legislation providing for the carrying on of low-cost housing and slum clearance projects by public bodies, loans to which may be reasonably secured. The possible solutions to this problem are numerous and varied. The lack of uniformity of legislation is explained partly by the breadth of the term "public bodies" as distinguished from the particularity of the description of eligible borrowers set forth in the clause from the Emergency Relief and Construction Act quoted above, partly by the absence of any form of act which would meet the problem and which had been tested in practice and amended by successive legislatures, such as the New York act in the field of limited dividend housing companies, and partly by peculiarities of local conditions and drafting. Thus of the first four acts adopted, the Ohio law⁴ provides for the creation of housing authorities for a territory comprising less than one county but more than two townships; the Maryland law⁵ provides for the establishment of a single state board to receive and administer funds loaned or granted by the federal government; the Michigan law⁶ provides for the creation of city commissions to act in part independently but in part through the city council; and the New Jersey law⁷ provides for the establishment of a state-wide housing authority.

The decision as to what kind of public body should be authorized to engage in housing activities must be answered in the light of state law and local conditions. The state constitution may prohibit the state from engaging in works of "internal improvement." If so, a careful examination of decisions defining the term "internal improvement" and limiting the scope of the constitutional provisions is essential. In a state where the decisions indicate the possibility that such constitutional provisions may prohibit a city from engaging in slum clearance and low-cost housing activities, a careful study should be made to determine whether or not such prohibition might apply to a separately constituted public body such as a housing authority. Michigan is one of the states in which these constitutional questions are particularly acute, especially since, as indicated above, the Michigan housing law, which was recently enacted, provides for the carrying on of housing activities by city commissions rather than by separately constituted housing authorities.

⁴ Ohio Laws 1933, 1st Spec. Sess., H. B. 19.

⁵ Md. Laws 1933, c. 32.

⁶ Mich. Pub. Acts 1933, 2nd Extra Sess., No. 11, §4.

⁷ N. J. Laws 1933, c. 444.

In Michigan there is also presented the question of the possible applicability of Article 5, Section 30 of the state constitution which provides:

The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected.

The major amendments to that bill introduced on the floor were the substitution of the governor in place of the mayor as the appointing authority⁸ and the insertion of a phrase limiting the operation of the act to any city or incorporated village "*in any county having a population over 500,000 according to the last federal census.*"⁹ The obvious intent was to limit the operation of the act to the City of Detroit, and it is frequently referred to as the Detroit Slum Clearance Act. The effect of the change, however, is to make a distinction between cities not on the basis of their population but on the total population of the county in which they happen to be located. Thus the Wayne County line may separate two cities with precisely similar housing problems, and under the act one of these cities is authorized to engage in slum clearance and low-cost housing activities while the other has no such right. Under the constitutional provision quoted above this may render the entire act invalid.

In Illinois¹⁰ an interesting problem of legislative drafting arose in connection with the definition of the powers of the state housing board with respect to housing authorities. Because of a peculiar and decidedly involved series of decisions on amendment by reference, some eminent local counsel felt that the inclusion in the housing authority law of provisions expanding the powers of a board created by another act might be unconstitutional and, accordingly, the provisions of the housing authority bill relating to the powers of the state housing board were repeated in another act which amended the state housing law which provided for the formation of limited dividend housing companies and for their regulation by the state housing board created pursuant to that act. The Illinois situation in this respect does not appear to be typical.

In Delaware the question was raised in discussion of the housing authority bill before the legislature as to the effect of Section 1 of Article 9 of the Delaware Constitution which provides in part that "no corporation shall hereafter be created, amended, renewed or revived by special act but only by or under general law." A review of the decisions, however, led to the conclusion that this provision was not applicable, especially in view of the fact that the Delaware bill, following in general outline the same form as the Illinois Housing Authority Law, set forth a mechanism under which housing authorities might be created in different counties throughout the state and did not of itself create any corporate body.

⁸ Mich. Pub. Acts 1933, 2nd Extra Sess., No. 11, §4.

⁹ *Ibid.*, §3.

¹⁰ Illinois Laws 1933, 3rd Spec. Sess., H. B. 4 and 5.

RELATION OF HOUSING AUTHORITY TO STATE HOUSING BOARD

After a careful examination of the constitutional and statutory provisions, it is essential to study carefully other legislation dealing with similar subject matter or which might affect the working of the housing authority law. One of the most puzzling questions is that of the relationship between the housing authorities and the state housing board where a state housing board has been created under a housing act providing for the formation and regulation of limited dividend housing companies. Where the state housing board is inactive it may be advisable (particularly in view of the certainty of detailed federal control of projects financed by federal funds) to ignore its existence in the drafting of a housing authority act. Where a state housing board is intelligently active, however, it would seem desirable to make available its accumulated experience, without, however, requiring a duplication of control in the case of a project financed and, therefore, rigorously supervised and controlled by the federal government.

The Illinois Housing Authority Law seems to suggest a reasonable solution to this problem. Housing authorities are subjected to the same control as limited dividend housing companies except with respect to projects financed and supervised or controlled by the federal government. The state housing board is given the power to approve or disapprove of members of a housing authority and to remove members after a hearing for cause shown. In addition the state housing board has certain powers of regulation and inquisition.

In New York, where the state housing board has been especially active, its powers with respect to housing authorities¹¹ are even more limited than those of the Illinois board. This was probably due in part to a rather peculiar present political situation and in part to a feeling that slum clearance and low-cost housing is so peculiarly a local problem that it should be carried on by municipalities without state interference or control. Even in New York, however, the state housing board was given powers which will enable it to be extremely helpful in the development of the policies of housing authorities.

DRAFTING THE ACT—ORDER OF MATERIAL

The form of a housing authority law is, of course, a matter of but secondary importance so long as it contains the essentials. Uniformity or at least similarity of arrangement, and, at least to an extent, of phrasing, are, however, helpful to people working with the laws of various states and simplify the interchange of ideas in case any changes are deemed desirable. Housing authority laws introduced recently in several legislatures contain a similar arrangement of material which is substantially as follows:

Title
Preliminary Recitals
Section 1. Short Title.

¹¹ N. Y. Laws 1934, c. 4.

- Section 2. Definitions.
- Section 3. Declaration of Necessity and Public Policy.
- Section 4. Creation of Authorities and Appointment and Removal of Commissioners.
- Section 5. Interested Commissioners or Employees.
- Section 6. Organization of Authorities.
- Section 7. Compensation and Expenses.
- Section 8. Powers of an Authority.
- Section 9. Eminent Domain.
- Section 10. Zoning and Building Laws.
- Section 11. Indebtedness.
- Section 12. Arrangements with Federal Government.
- Section 13. Powers and Duties of Housing Board.
- Section 14. Filing Plans, Etc., with Housing Board.
- Section 15. Security for Funds Deposited by Authorities.
- Section 16. Advances by City to an Authority and Acquisition of Property from a City or Government.
- Section 17. Tax Exemptions.
- Section 18. Dissolution.
- Section 19. Repeal of Inconsistent Provisions.
- Section 20. Effect of Partial Invalidity.
- Section 21. Emergency Clause.

The above outline will serve probably as well as any other as an order of discussion.

DRAFTING THE ACT—SPECIFIC PROVISIONS

The title of the act must comply with the requirements of the state in which it is enacted. In particular it is essential that the title contain sufficient description of all of the subject matter and, accordingly, it is suggested, especially in a state requiring a long form of title, that the title be drafted last. The inclusion and form or preliminary recitals depend upon local practice. The draftsman may find of assistance the form of recitals in the bill recently introduced in the West Virginia Legislature.

The use of a short title (Section 1) is, of course, of assistance for easy reference. The important considerations in a short title are that it shall be descriptive but shall not be subject to confusion with titles of other acts.

A section on definitions (Section 2) seems highly desirable. The definitions should be carefully checked against other legislative or judicial definitions in the state in order to promote consistency of definitions so far as feasible. In Illinois the definitions appear after the body of the act but it would seem that in general it is advisable to define a term before rather than after using it.

A declaration of necessity and public policy (Section 3) should be supported at any legislative hearing by specific findings of fact. The following is a rather terse form of declaration:

Section 3. *Declaration of Necessity and Public Purpose.* It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of public corporate bodies to be known as housing authorities, and to confer upon

and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low-cost housing and slum clearance projects; and that the powers herein conferred upon the housing authorities, including the power to acquire property, to remove unsanitary or substandard conditions, to construct and operate housing accommodations and to borrow, expend and repay moneys for the purposes herein set forth, are public objects essential to the public interest.

The question of the manner of creating authorities and the appointment and removal of members of an authority (Section 4) is one for extensive discussion and careful definition. The definition of an area, the determination of necessity for the creation of an authority and the appointment and removal of original and successor members of an authority are all matters peculiarly affected by local conditions. Two points should, it seems, be kept in mind in any event, first, the desirability of having the appointments for staggered terms so that continuity of management can be assured and, second, the necessity of avoiding the possibility of attack on the ground of improper delegation of legislative authority. The section should be carefully phrased so that the appointment of the members and probably the filing of a certificate as well shall be conditions precedent to the creation of an authority, but the authority should not be stated to be "created by" those having power of appointment.

The function of Section 5 dealing with interested commissioners or employees is obvious. Care should be taken in the drafting of this section not to make the restriction so severe that individuals whom the authority would desire to have as members or employees would be automatically disqualified.

If the section dealing with appointments does not designate which appointee shall be chairman, provision should be made in Section 6, dealing with organization of authorities, for the selection of a chairman. In order to avoid any possibility of requiring that action by all members of an authority shall be required, it should be stated definitely in the act that a majority shall constitute a quorum. In general it would seem desirable to provide (Section 7) that no member of an authority shall receive any compensation, but shall be entitled only to reimbursement for any necessary expenditures.

Section 8, defining the powers of an authority, should be very carefully drafted. Conditions have been changing so rapidly that no precedent offers a complete solution to the present drafting problem. Any attempt to limit the powers of a housing authority to precisely the form of activity in which it is at present contemplated that it will engage is practically certain to cause future embarrassment. Different housing authorities, and even the same authority in the case of different projects, may either (a) acquire the land from private owners, build and operate, or (b) acquire the land from the United States, build and operate, or (c) acquire a partially completed building from the United States, complete the project and operate it, or (d) acquire a completed building from the United States and operate it, or (e) lease a completed building from the United States and operate it, or (f) act as agent for the United States in connection with any part or all of the activities of land assemblage, con-

struction and operation. No uniform technique has been or probably will be developed, at least in the immediate future, and it is extremely important that the powers given to a housing authority be as broad as possible. The restriction upon the use of such powers will, of course, be imposed by the loan agreement. Care should be taken to avoid conflict with other public bodies or commissions.

The provisions relating to the exercise of the power of eminent domain should be carefully drafted with a view to obtaining as expeditious and inexpensive procedure as is permissible under the state constitution. In slum clearance, especially, the use of eminent domain to clear titles will probably be quite general.

Although it would seem generally preferable to include in Section 10 provisions subjecting an authority to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the project is situated, such laws should be carefully studied so that if possible the authority may be exempted from the application of laws or regulations which would seriously interfere with its functioning.

Provisions relating to the indebtedness of an authority (Section 11) should be as broad as possible. It would seem generally unnecessary to insert detailed provisions for the issuance of revenue bonds. This question and the contents of the entire section should be very carefully checked by competent bond counsel. It is desirable in any event to provide for the issuance of corporate obligations secured by a mortgage on the property of the authority.

Section 12, relating to agreements with the federal government, is probably unnecessary but would seem desirable in order to remove any possibility of criticism of the supervision and control imposed upon an authority under a loan agreement with the United States.

The question of the substance of the provisions to be included in Sections 13 and 14 defining the relation of an authority to the state housing board has been discussed above. The New York and Illinois laws offer interesting precedents.

In order that funds loaned to an authority by the United States and deposited by the borrower may be "reasonably" secured, it would seem desirable to insert a section authorizing state banks to give surety bonds and/or deposit collateral to secure the funds of the authority. The state laws should be carefully checked in order to determine whether this is possible and, if so, how it can be done.

In order that an authority may have funds which it needs for preliminary work and for general administration expenses, the city or other political unit in which it is operating should be authorized to make loans to it from time to time. The amount which the municipality should be authorized to lend for such purposes will, of course, vary greatly in different states, but without some funds it will be extremely difficult for the authority to work up any project. The municipality should also be authorized (Section 16) to transfer property to an authority in case it wishes to make a contribution to a project.

The question of tax exemption (Section 17) raises an extremely controversial issue. The objections to tax exemption, both practical and theoretical, are obvious. On the other hand it would seem that the city should make some contribution to a local project. The compromise embodied in the New York Act which provides that the city may collect an amount not in excess of the sum last levied as an annual tax upon the property of the authority prior to the time of its acquisition by the authority seems a reasonable compromise. In any event, it would seem that the securities of an authority should be exempt from taxes.

Provisions for dissolution (Section 18) should require satisfactory provision for creditors and the payment of the balance either to the state or to the city as may be deemed advisable. The Illinois law contains an interesting statement of alternatives. Sections 19, 20 and 21 dealing respectively with repeal of inconsistent provisions, effect of partial invalidity, and an emergency clause, present local problems and should be carefully phrased to comply with local practices.

CONCLUSION—A CAVEAT

This article is being written only about seven months after the adoption of the first public housing authority law and about three months after the enactment of the second. In so new a field the suggestions and comments set forth herein must be considered tentative and subject to revision, excision, and addition as the housing authority legislation meets the test of actual operations.

FINANCING SLUM CLEARANCE

GEORGE W. WARNECKE*

Probably at no time in the history of this country has slum clearance housing been as much in the public eye as in recent months. Slums, defined as residential areas where houses and conditions of life are of such a squalid and wretched character as to make these areas social liabilities, must now be mopped up.

Success of the slum clearance housing projects built in recent years in England, Germany, Austria, Italy, and more recently in Russia, has brought to the fore the pitiful lack of thought which has been given to this subject in our own country. The inadequacy of this type of housing in the United States has been repeatedly shown by surveys made by competent agencies. Among other facts these show that new housing construction in the larger American cities over the past two decades has been principally for that 30 per cent of the population which receive the largest incomes. The remaining 70 per cent of the population, particularly those in the lowest-income groups, have to make the best of the antiquated and obsolete properties cast off by the more fortunate families.

To better understand this problem of financing slum clearance a review of what has previously taken place may be helpful. In times past when private business found that a small surplus in housing had been created for this uppermost 30 per cent of the population, then further construction became unprofitable. Further, when it became apparent that this surplus was not readily absorbable over a short period of time, there was an immediate downward trend in rentals. This downward trend caused the lending agencies to become more conservative, and as a consequence practically all private construction stopped.

Cycles revolve slowly—even these limited surpluses are infrequent. The small and occasional surplus intended to satisfy the demand of only 30 per cent of the population represents all that private business ever provided to meet the constantly increasing demands of the remaining 70 per cent of population.

The permanence of this problem of adequate housing for the bulk of people who are in the low-income group is apparent to anyone who makes even a cursory in-

* E.E., Kansas University, graduate engineering work, Heidelberg University, law and business administration, Columbia University. Executive on real estate investments, property construction and management for many nationally-known mortgagees and property owners throughout the country. Drafted by the Government as advisor on mortgage financing and real estate problems. Author of publications on real estate finance and operations.

spection of the housing field. However, in spite of the impossibility of obtaining funds for slum clearance construction today through normal channels, or of having private business provide such construction, it is increasingly apparent that low-cost housing construction must go ahead. Throughout the country in the larger cities there exist old, dilapidated buildings which the general public has been made greatly aware of as incubators for diseases and crime. They have determined that such rookeries must be replaced with adequate housing facilities.

Private business has never made the attempt in any appreciable way to supply adequate housing to meet the needs of the great bulk of population in the lower-income groups. In fact the very motive of profit which causes private business to enter the construction field mitigates against any low-cost housing being constructed.

Financial requirements for large-scale slum clearance operations do not differ in kind from those necessary to complete any program of dwelling construction. The forms of financing, however, need to be adapted to secure the following benefits:

- (a) Basic mortgage money must be available in large sums.
- (b) It must be available at lowest possible interest rates.
- (c) Amortization must cover a long period.
- (d) Equity money, if any, without high discounts or high rate of return must be available.

The financial problems connected with operations of this type can probably best be shown by example. For instance, let us consider the following facts which apply to the rehabilitation of slum areas in one of our largest midwestern cities—

1. Size of site—3,036,401 square feet
2. Estimated population to be rehoused on this site—3600 families
3. Average number of persons per family—4.9
4. Estimated cost of site—\$1.35 per square foot
5. Estimated cost of building construction—\$0.33 per cubic foot
6. Number of cubic feet of building required per rentable room—2050 cubic feet
7. Operating costs per rentable room—\$3.00 per room per month
8. Taxes (normal rates)—\$1.50 per room per month
9. Present average rental rates of families resident in slum areas—\$6.50 per room per month
10. Amortization rates to liquidate a loan in 33 years—1.51%
11. Interest rates assumed to be—4%

Based on the above the following monthly rental minimum is possible—

Operating Cost	\$3.00	per room per month
Taxes	1.50	" " " "
Interest on land and building cost.....	3.20	" " " "
Amortization on building cost.....	.85	" " " "
Total.....	\$8.55	per room per month

Thus under favorable conditions of cheap money and low land cost the rental per room per month is \$8.55 compared with an average rental rate of \$6.50 per room per month for the present slum residents.

Efforts made thus far to replace the slum dwellers in our larger cities in adequate housing facilities gives little reason to hope that this can be done through the traditional methods of realty financing. To circumvent some of the obstacles many proposals have been made for Government aid or for aid by foundations or other private sources. Some of these are—

- Government-built housing—Federal, State, Municipal
- Government grants and loans to Public Authorities for housing purposes
- Government loans to limited-dividend housing corporations
- Partnership between Public Housing Authorities and private enterprise
- Private finance corporations, organized with funds supplied by building material manufacturers, labor unions, foundations or individuals to supply funds for housing operations

Breakdown of the free mortgage market—the drying up of the sources of loanable funds for housing—has been followed by the announcements that federal government agencies will make direct loans for housing. As a consequence projects have been considered in various parts of the country in the last two years, first, by the Reconstruction Finance Corporation and, later, by the Public Works Administration, having in mind the provision of equity money by the promoters against loans by these government agencies, the entire operations to be carried on under a state housing authority with limitations as to the dividends payable to the equity holders. In addition, direct loans plus 30 per cent grants on labor and materials were made available to municipalities having adequate legislation to supervise housing projects.

Since private equity money able to meet the requirements of the government is practically non-existent at the present time, the government recently determined upon the policy of entering the slum clearance field directly in the rôle of a real estate operator. The government agency for this operation is the new Public Works Emergency Housing Corporation.

The government in thus participating directly in the slum clearance operations goes far beyond its usual regulatory practice. Whereas in prior times in various states the government (1) provided tax exemption for certain fixed periods; (2) publicly financed utilities installations; (3) provided access to new housing by publicly financing systems of transportation; (4) granted the right of eminent domain to condemn the property; (5) extended tax exemption privileges to housing corporations which limit their dividends, or their rents, or both, now it directly hurdles many of the financial obstacles which beset the carrying out of a slum clearance program.

More necessary than all other requirements for the replacement of slums with

adequate housing is a plentiful supply of money at very low interest rates or some other financial arrangement which provides for low fixed charges on this type of development. The actual extent to which monies can be applied in this field can be readily appreciated through the statement that the elimination of slums through the construction of new housing could easily absorb in excess of five and one-half billions of dollars.

Any discussion as to the propriety or desirability of the government engaging in housing projects is academic. This is a condition—not a theory. The government is attempting to eradicate slum areas and provide low-cost housing. Certainly better housing for all the people is a result to be hoped for. A better use for government funds either from a social standpoint or from the standpoint of creating employment can hardly be conceived.

THE RELATION OF HOUSING TO TAXATION

HAROLD S. BUTTENHEIM*

The housing problem will never be solved while the *land* problem remains unsolved. The land problem will never be solved while the *taxation* problem remains unsolved. The taxation problem will never be solved while assessors are required to tax real estate as though land and buildings were one and inseparable.

No system of taxation, even though it be "for revenue only," can fail to aid or injure the general welfare. And no system of real estate taxation can fail to raise or retard the housing standards of the community.

There is, of course, no single solution for the housing problem. Housing is too closely tied up with unemployment, exploitation, lack of city planning and the whole distressing maladjustment of our economic and civic life to be perfectible by any panacea. But a wise use of the taxing power can provide the mental and financial stimuli without which we cannot hope either to banish the slums or to banish the need for governmental subsidies.

Recent years have witnessed a decided trend away from the old general property tax, which aimed to levy at the same rate on all kinds of wealth—real estate, securities, jewelry, furniture and all other property—and to assess it all by the same methods. In thirty-four states the constitution now permits a classified property tax, and eighteen now tax certain intangibles at special low rates. Seven states, including New York, levy no tax on intangibles in the hands of resident owners; and New York in 1933 took the further step of abandoning all attempts to reach personal property through a property tax.

This progress has resulted from a more or less confused realization of the fact that a like treatment applied to radically different elements does not produce similar results in economics any more than in chemistry. The same taxing methods could not be successfully applied alike to real estate, household goods and intangibles. It now appears that we shall find it necessary to go even further and realize that real estate is not a homogeneous form of property, but a dual form which must be broken down into its elements—land and improvements—before we can approach a scientific method of taxation.

* Editor, *The American City Magazine*. President, General Welfare Tax League. Member of council and executive committee, National Municipal League. Member of advisory committee, President Hoover's Conference on Home Building and Home Ownership. Member of council, International Federation for Housing and Town Planning. Director, Planning Foundation of America, National Conference on City Planning, National Child Welfare Association.

In providing the public revenues of any city, the less we tax land the less is the pressure on owners to sell or use the land for housing projects. The less we tax improvements, on the other hand, the *greater* inducement there is to erect new homes or improve old ones. Obviously, a rational system of real estate taxation will reverse the first trend and strengthen the second. By raising more revenue from the land and less from buildings, two essentials of low-cost housing will be achieved: land will become cheaper to buy and develop, and homes will become cheaper to own or rent.

As I pointed out at the recent National Public Housing Conference in Washington, part of the confusion on this subject in the minds of law-makers and home owners arises from the traditional legalistic use of the term "real estate" as meaning either vacant land alone or land and buildings combined. Lawyers and dictionaries having united in one term two entities as dissimilar as oil and water, tax-makers subserviently follow suit.

Why labor products that happen to be fastened to the land should be taxed at a high rate, while moveable products are taxed at a low rate or not at all, no one has satisfactorily explained. I am not urging, of course, the taxation of moveable products. Personal property—as such products are generally called—has been found to be so unreliable and inequitable a source of public revenue that the personal property tax in most states is either a farce or a corpse. Taxes on homes, however, continue to be exacted, not from any social or economic necessity, but because homes are anchored to the land and are legally classified as a part of real estate. Thus we perpetuate the penalizing of *home* owners and tenants for their thrift and energy. While doing so we give legal sanction to land holders to collect rents or speculative profits which represent no service which land holders as such have rendered or can render to society.

PROPOSED STEPS TOWARDS RATIONAL TAXATION

Intelligent advocates of housing betterment are giving increasing study to this phase of their problem. Gradually they are realizing the desirability of untaxing buildings and of raising local public revenues largely from the land rents created by governmental expenditures and by the growth or concentration of population. But if theory is to become practice, there arises the practical question of how this rational system of taxation can be adopted with the greatest benefit and least hardship to all concerned. Various proposals for steps to this end have been made, but in few instances as yet have been enacted into law.

The outstanding example of such legislation in the United States is the Pittsburgh "graded tax" plan. Authority for this method of taxation was granted to the second-class cities of Pennsylvania by the Legislature in 1913.¹ For the first two years a reduction of ten per cent from the tax levied on land values was allowed on building values. Thereafter, during each successive triennium an additional reduction of

¹ Penn. Laws 1913, no. 147, p. 209.

ten per cent was allowed, until the total reduction equaled 50 per cent of the rate on land values. This limit was reached, after the five successive steps, in 1925, and since then Pittsburgh building valuations pay a city tax rate of one-half that levied on land values.

The act provides that land and buildings shall be assessed separately, but without discrimination in the appraisal values for tax purposes. It is entirely a matter of fixing separate tax rates. The Council applies two separate rates, one to apply to the land and the other to buildings. The latter must now be one-half of the former. Strictly speaking, Pittsburgh does not have a tax rate on real estate. Instead it has a land tax and a building tax. No tax whatever is levied on personal property or machinery.

The 1933 rate in Pittsburgh (exclusive of Board of Education and County taxes, to which the "graded" plan does not apply) was \$2.06 on land and \$1.03 on buildings, on each \$100 of assessed valuation. The present Mayor of Pittsburgh in his campaign for election last fall advocated legislation to extend this plan by gradual steps until buildings are freed up to 80 per cent from all real estate taxation. Subsequent to his election Mayor McNair undertook to have two important tax measures enacted at the recent special session of the Pennsylvania Legislature. One of these bills, which would have reduced the building tax rate to 20 per cent of the land rate, passed the lower house with only eight dissenting votes; and the other bill, applying the graded tax to revenues for the public schools, passed the lower house with only one dissenting vote. There was no vote in the upper house, however, as the bills did not get on the Senate calendar in time for action before the special session adjourned.

Pittsburgh's Chief Assessor, P. R. Williams, writes under date of February 20, 1934: "The success of Pittsburgh's graded tax plan is generally recognized, and after twenty years of actual experience no one seriously proposes a return to the old system which prevailed prior to the Act of 1913. The present graded tax law has been endorsed and defended by the Allied Boards of Trade of Allegheny County, the Pittsburgh Chamber of Commerce, Pittsburgh Civic Commission, Pittsburgh Real Estate Board, Civic Club of Allegheny County and by various labor unions. A majority of the members of the City Council are on record in favor of extending the present graded tax system and there is substantial evidence of a growing public sentiment in this direction and a strong probability of some important advance during the next year."

An interesting special Act of the Tennessee Legislature,² approved by the Governor on April 21, 1933, gives the Mayor and Aldermen of the little town of Collierville, Tenn., authority to purchase, either on the open market or at tax sales, land within the corporate limits of the town, and to lease this land for the annual economic rent, which is defined in the Act to be "such annual payment for the rent of land as represents the value included in the right to use the bare land, exclusive

² Tenn. Priv. Acts 1933, p. 1257.

of the value of any character of improvements on said land such as buildings, crops and trees, less any municipal taxes that may be assessed upon the lessee and upon any of said improvements." Leases may extend for not more than 99 years, the annual economic ground rent to be determined each calendar year by the governing body of the municipality.

OTHER PROPOSALS FOR LOWER TAXES ON BUILDINGS

Numerous suggestions for legislation which would permit discrimination between land and improvements for tax purposes have been made. These fall into three general categories: (1) those that provide for the exemption of improvements without touching upon land taxation; (2) those that provide for the taxation of land without regard to present taxes on improvements; (3) those that provide for a shifting of taxes from improvements to land values.

One of the most important of these proposals was the Grimstad Bill, introduced in 1923 in the Wisconsin Assembly through the influence of Professor John R. Commons. This is similar to the Keller Bill introduced in Congress in 1921.³ These bills were offered as one of the best and most accurate methods of getting at unearned incomes arising from land ownership. Professor Commons defines unearned incomes as the "incomes which society creates, but the individual does not create."

Increases in land value, resulting from improvements of either a visible or an invisible nature, are considered earned income and exempted from taxation. For example, amounts paid as special assessments are exempted by deducting said amounts from the land value on a graduated scale for 33 years. Improvements, such as clearing land, draining swamps, blasting rocks, and excavating foundations for buildings are treated in the same way. Soil fertility is also exempted, by the simple method of valuing the fertility, if kept at par, at one-half the value of the farm land. In this way one-half the value of kept-up farm land is bare land value subject to the tax, and one-half is soil fertility exempt from the tax, the same as buildings, or special assessments, or other improvements, visible or invisible.

Although neither the Keller nor the Grimstad bill was enacted into law, they are interesting examples of carefully devised legislative proposals in this field.

Measures which would provide other approaches to land or site-value taxation or to the collection by the community of the economic rent, or location rent as some prefer to call it, are now being proposed in some of the states. A constitutional amendment to prohibit the imposition of any sales tax and to provide for the progressive reduction and final extinction of taxation upon improvements and personal property, is being urged in California and has been endorsed by the State Federation of Labor.

Two bills have been drafted in Massachusetts. One aims to amend the long existing betterment tax law, by making the tax applicable to all lands which have been enjoying public improvements without a betterment assessment; no betterment

³ 67th Cong., 1st Sess. H. R. 6773.

tax, however, to be retroactive on such lands. The second bill aims to require automatic reductions in valuations of buildings annually, just as automatic reductions are made in the annual valuation of automobiles. The bill recognizes depreciation in respect to buildings and other improvements. The lack of revenue would be made up by automatically raising the valuation of lands for the purpose of assessment.

A bill introduced in the 1933 New Jersey Legislature would provide for local option in taxation to the extent of giving to the voters in any taxing district in the state the right to reduce, at the rate of 20 per cent annum for five years, taxes on improvements and on tangible personal property. Thereafter local real estate taxes would be raised wholly by a tax levied upon the true value of the assessable land in the taxing district. "True value" is defined in the bill as the economic rent of land capitalized at 5 per cent per annum; and "economic rent" is defined as that sum for which the bare land would rent per year if let on a long lease.

Another proposal, which in most states might require a constitutional amendment, is to allow an exemption of \$3,000 or \$5,000 on each family unit, in assessing new housing for taxation; and to continue to assess at full value the land on which such housing is built. Such a plan was adopted, with a ten-year limitation of tax exemption, in New York⁴ during the housing shortage after the war, and is believed to have been partly responsible for the tremendous building activity which followed.

One of the boldest suggestions yet made—offered last year by a group of optimistic Georgists—would involve an amendment to the Constitution of the State of New York. To Article I, Section 10, which now contains the statement that "The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State," would be added the words "and the annual rent of such lands, being created by the presence and activities of the people, shall be taken for public purposes."

TAX PROVISIONS IN HOUSING LAWS

Such drastic changes in state or municipal revenue systems will be difficult of adoption and hence very slow in their attack on our fundamental problem. Meanwhile, there seems justification for securing, if we can, some special consideration for limited-dividend and public housing projects. Not only may the physical properties and franchises of such projects be relieved from taxation, but exemption may also be given to securities issued by them.

An ingenious provision in the Municipal Housing Authorities Act,⁵ adopted by the New York Legislature in January, 1934, provides that "The property of an authority shall be exempt from all local and municipal taxes. An authority shall pay to the city a sum fixed annually. Such sum shall not exceed in any year the sum last levied as an annual tax upon the property of the authority prior to the time of its acquisition by the authority." While this provision will help to lower rents, it would

⁴ N. Y. Laws 1920, c. 949.

⁵ N. Y. Laws 1934, c. 4.

probably be more sound and just if the law gave the municipality the option of charging either the tax just mentioned or the current land tax in any future year, whichever might be greater.

In addition to this New York law, *public housing* legislation has been enacted in recent months in Ohio,⁶ Kentucky,⁷ New Jersey,⁸ Maryland⁹ and Michigan,¹⁰ authorizing the creation of state, metropolitan, or municipal housing authorities. The Ohio, Kentucky and Maryland laws are silent on the subject of taxation, while those of New Jersey and Michigan stipulate that the property of housing authorities is not tax exempt.¹¹

Of the fourteen states having laws providing for state-regulated *limited-dividend housing* corporations, the California,¹² Florida¹³ and Illinois¹⁴ laws are silent on taxation; in those of Ohio,¹⁵ Arkansas,¹⁶ Kansas,¹⁷ South Carolina,¹⁸ Delaware,¹⁹ North Carolina,²⁰ Texas,²¹ Massachusetts,²² and Virginia,²³ taxation is not mentioned, but a section specifies that provisions of corporation laws apply where not in conflict with the act; in New Jersey a special tax provision was repealed in December, 1933;²⁴ while the New York Act of 1926²⁵ has tax exemption provisions as follows:

1. Cities are permitted to exempt buildings and improvements, but not land, of 'public' limited-dividend housing corporations from taxation. If advantage is taken of this permission, then such buildings and improvements are exempt from state property taxes. These exemptions do not apply to buildings erected after January 1, 1937.²⁶
2. 'Public' limited-dividend housing corporations are specifically exempted from all state non-property taxes including franchise, income, and mortgage registration taxes.²⁷
3. Also the income from stocks, and bonds, of 'public' limited-dividend housing corporations is exempt from taxation.²⁸

⁶ Ohio Laws 1933, H. B. 19.

⁷ Ky. Acts 1933, c. 2.

⁸ N. J. Laws 1933, c. 444.

¹¹ The information on which this and the following paragraph are based was compiled in February, 1934, by Joseph G. Riddle, of the American Legislators' Association. As indicating the recent rapid spread of the movement for public or limited-dividend housing, it is interesting to note that all of this legislation, with the exception of the New York and Ohio limited-dividend laws of 1926 and 1932 respectively, was enacted in 1933 or 1934.

¹² Cal. Stat. 1933, c. 538.

¹³ Fla. Gen. Laws 1933, p. 332.

¹⁴ Ill. Laws 1933, H. B. 622.

¹⁵ Ohio Laws 1932, p. 78.

¹⁶ Ark. Acts 1933, no. 89, p. 267.

¹⁷ Kans. Laws 1933, c. 225.

¹⁸ S. C. Acts 1933, no. 143, p. 176.

¹⁹ Del. Laws 1933, c. 61.

²⁰ N. C. Pub. Laws 1933, c. 384.

⁹ Md. Laws 1933, c. 32.

¹⁰ Mich. Pub. Acts 1933, no. 94, p. 117.

²¹ Tex. Gen. Laws 1933, c. 223.

²² Mass. Acts 1933, c. 364.

²³ Va. Acts 1933, c. 55.

²⁴ N. J. Laws 1933, c. 426.

²⁵ N. Y. Laws 1926, c. 823.

²⁶ *Ibid.* §39 (2).

²⁷ *Ibid.* §39 (1).

²⁸ *Ibid.* §39 (2).

RELIEF FOR REAL ESTATE?

One occasionally hears a city planner advocate the British system of "local rating" as less burdensome than the American method of real estate taxation. British cities assess the tenant and not the owner of property, and compute the local tax at a certain percentage of the rent paid. If an owner occupies his own property, the rent is computed on the basis of what it would bring in the market. Property completely unoccupied and unused is exempt from taxation. As Ernest S. Griffith, Professor of Political Science at Syracuse University, has pointed out,²⁹ the British system places a sharp penalty upon the development of property—"The higher the tax rate the greater the penalty."

In discussing this same subject, John A. Zangerle, Auditor of Cuyahoga County, Ohio, gives a practical example³⁰ of the added burden to owners of income property which would result from the adoption of the British system in an American city:

"By way of illustration suppose that the building value of a city is \$300,000,000, that the land value is \$300,000,000, one-half of which, valued at \$150,000,000, is vacant. To levy \$2.50 on the \$300,000,000 building value, plus \$300,000,000 land value, would produce \$15,000,000. To produce this \$15,000,000 on \$300,000,000 improvement value, plus \$150,000,000 land value (exempting the vacant \$150,000,000) would require a tax levy of \$3.33 per \$100 of value assessed."

Many sincere advocates of housing reform in American cities are being proselytized to the worship of false gods by the current agitation for "tax relief for real estate." As *The American City* pointed out editorially in its issue of March, 1934,³¹ many municipal officials, with a laudable desire to help distressed property-owners but with inadequate consideration of how best to do it, are advocating enactment of general sales tax legislation, the proceeds to be so apportioned as to reduce local real estate taxes. If the purpose is to lower the total taxes of the more wealthy property-owners, perhaps a two per cent tax on all retail sales—including food and clothing, as is proposed in bills introduced this year in the New York and New Jersey Legislatures—would accomplish this purpose. But if rent-payers or small-home owners are the expected beneficiaries, the results would be most disappointing. Obviously a general sales tax bears much more heavily on wage earners and small merchants, who must spend most of their income on commodities, than on their wealthier townsmen whose surplus buys investments or personal or professional services. A sales tax, moreover, is a serious drag on the revival of prosperity on which our general welfare now vitally depends.

As was well said by Robert Murray Haig, McVickar Professor of Political Economy at Columbia University, at the 1932 convention of the National Municipal League, "to propose the substitution of general sales taxes for taxes on real estate as a measure of relief for the small man is an insult to intelligence and an affront to common sense."

²⁹ 48 AM. CITY 39 (Oct. 1933).

³⁰ 49 AM. CITY 74 (Feb. 1934).

³¹ 49 AM. CITY 43 (March, 1934).

If real estate must have relief from taxation, the public welfare will be advanced, not by the adoption of sales taxes, but by placing more reliance on progressive income and inheritance taxes as sources of governmental revenue. Students of public finance generally have accepted the theory of ability to pay as a proper and desirable basis of taxation. In our present economy, incomes and inheritances form the best index of such ability, and their progressive taxation is the best means of reaching many blocks of taxpaying ability which otherwise will build anti-social fortunes. But assuming that, whether by new taxation or by municipal economies, a reduction in real estate taxes is made possible, the general public can benefit from such reduction, as I have already pointed out, only if the reduction is applied to that part of "real estate" which human labor has created.

A scientific system of taxation will not only make land cheaper to buy and houses cheaper to build and maintain. It will also help to banish that other arch enemy of decent housing—low wages. The surest guarantee of high wages will come, not with the display of a "blue eagle" inside of every shop, but by the display of "help wanted" signs outside of every shop. When the number of jobs seeking workers is permanently greater than the number of workers seeking jobs, wages will exceed a mere subsistence level—and wage earners will be able to pay an economic rent for an adequate home. A wise combination of income, inheritance and land-value taxes would help greatly to hasten that happy day.

A MAN AND A BOOK

This discussion must not close without some reference to the influence of Henry George. Since the publication of "Progress and Poverty" in 1879, increasing numbers of people in all lands and in all fields of endeavor have come to recognize the essential greatness of its author's personality and the potency of his dominating idea.

While it is true that few economists accept the thesis of the "single tax" in its entirety, yet, as Nicholas Murray Butler testified a short time ago,³² "it may be said at once that so far as Henry George pointed to privilege as an unbecoming, unfair and indeed disastrous accompaniment of progress, his teaching has passed into economic theory everywhere."

Those of us who would base our system of public revenues on the thrice-buttressed foundation which I have proposed, are obviously "triple taxers" rather than "single taxers." But if mankind does ultimately succeed in banishing poverty and in paying for its governmental services largely by the values which such services create, much of the credit will certainly belong to the man who, more than any other who has ever lived, dramatized and vitalized this idea in its economic and ethical implications. And that man was Henry George.

³² Presidential address, "Progress and Poverty," delivered at the 177th Commencement of Columbia University, June 2, 1931.

HOUSING PROJECTS AND CITY PLANNING

ALFRED BETTMAN*

A proposal to clear and rebuild a slum area indicates strong dissatisfaction with the existing conditions of and in that area. The area is sordid in appearance, ill-kempt and obviously on the decline. Statistics of the juvenile and criminal courts, of the board of health and police department show a disproportionate amount of disease and crime occurring or originating in the area; and, certainly, the physical facts of the area, such as the character and conditions of the buildings, have had a part in producing these statistics.

The owners of the buildings are aware of these facts and results; the social workers and the building department have not permitted them to forget these facts and results. Obviously these owners do not consider it worth their while or financially possible to reconstruct or rehabilitate the buildings so as to make them more conducive to decent living conditions. The clearance and rebuilding proposal assumes that the city government does not believe in the possibility or value of making and enforcing building regulations which would force such rehabilitation or reconstruction; and this assumption is, no doubt, correct. The causes of the evil conditions must be more complex and deep-lying than could be removed by building regulations and the orders of the building department. These beliefs of the owners and city government are corroborated by other facts of the situation. The uses of the buildings and land in the area seem to grow more spotty and mixed. Land values tend to decline. Population tends to decline. The area is abnormally unstable and depreciating in its uses, in its values, in its appearance, in everything. Something deeper and more complex is the matter with it than the mere physical conditions of the buildings.

A good many people live in these unfit surroundings. So the jump is made to the conclusion that the thing to do is to clear the area and rebuild it with good housing; a proposal which involves an immense effort and outlay of public or private funds or both. How does anybody know, however, that the area is the appropriate place

* B.A., 1894, M.A., LL.B., 1898, Harvard. Member of firm of Moulinier, Bettman & Hunt, Cincinnati. Practiced at Cincinnati since 1898. General counsel, Title Guarantee & Trust Company of Cincinnati. Member of City Planning Commission of Cincinnati and Regional Planning Commission of Hamilton County, Ohio. Member of Advisory Committee on Housing and Zoning, U. S. Department of Commerce. Governor, American City Planning Institute. Vice-President, National Conference on City Planning. Author of numerous articles and reports on city planning law, public utility franchise questions, etc.

for this effort and outlay on housing? How does anybody know whether the population decline may be due to the population trend of the whole community and not merely of the area? Might it not be probable that other parts of the city have such advantages that they will inevitably drain off the population of that area regardless of the character and conditions of its buildings, or that the transportation, school, civic, recreational and other communal facilities, which make life on a decent plane possible, are so inadequate or maldistributed or badly placed that the new housing will go the way of the old and the rehabilitated area soon become as unstable and declining as the old? Might it not be more wise to select other parts of the city for the new housing and devote the slum area to industry and other non-residential uses? New houses for old and in the same place may be too simple and superficial a remedy for a disease which has its causes in forces more deep, varied and complex than the size, character and condition of the old buildings. Before deciding on a difficult and expensive housing enterprise, ought not these forces be ascertained and traced? A disease appearing on the foot may be due to conditions in the head or heart, and revamping the foot may prove delusive.

These remarks and questions point to the conclusion that before deciding what to do with the slum area, before jumping to the conclusion that the thing to do with it is to build new housing there, the deeper and more complex sort of study of the situation which we know as city planning should be undertaken. The community needs to know what is the trend in the amount and distribution of its population and industry; what are the areas appropriate for habitation, trade, industry, recreation and civic uses, what would be a sound general allocation of the territory of the city amongst residential, trade, industrial, recreational, civic, transportation, communication and other functional uses which would tend to produce a relatively efficient, economic, healthful, convenient, decent and stable development of the city and of its various parts, including the slum area.

An important factor in the social or material value of any structure is the appropriateness of its location for the functional service which the structure is intended to supply, and this appropriateness can be determined only by the planning of a territory or entity larger than the structure itself and of which the structure and its location form a part. Each functional part of anything derives its value and efficiency from its relationships to the other functional parts; with the consequence that some degree of planning or designing the whole is necessary for an acceptable determination of the location of any part. To take a simple and obvious illustration: the extent and location of the bedroom of a house or of the living room or furnace, if that bedroom or living room or furnace is to perform its function efficiently and contribute the investment in it to the social and money value of the house, are dependent upon its relationships to the extents and locations of the other parts of the house, the halls, the kitchen and so on; and the extent and location of any part can consequently not be determined intelligently except by means of a plan or design

of the whole house which would assign to each of these functional parts its extent and location adjusted to the extents and locations of the other functional parts. All this is equally true of the city or urban territory. The extent and location of any dwelling district cannot be determined intelligently without designing, in that general way which we know as the city plan, the extents and locations of the commercial districts, the industrial districts, the transportation facilities, the schools, the recreational spaces, the street spaces and so on; for all these are so interrelated with each other that there will be waste and instability in the investment in the dwelling district unless its interrelationships with these other uses of the land are recognized and its extent and location determined by means of some general planning or designing of the whole city.

Furthermore, the values which can be realized from the investment in a proposed housing district, whether those values be measured in terms of dollars or terms of human health, morals and decencies, as well as the stability of the district, that is, its protection against the decline of those values, are dependent not merely upon the character of the apartments or other structures which are built in the district, but on the supply of services to the people who live in those houses, some of which services may be located within the district itself and others be supplied from without the district. The inhabitants of the area will need schools, churches, fire stations, streets giving convenient and adequate access to and from other portions of the city, play spaces, everything which goes into or is required for healthful, convenient, moral and prosperous urban life. The rebuilt area can be protected against its own decline only by such a development, both of the area itself and of other portions of the city, as will tend to give the area this adequate and convenient supply of all such services; and the money and efforts required for the slum clearance and rebuilding will not be justified, unless the plan of the city assures to a reasonable degree that these services will be forthcoming.

Furthermore, the lay-out of the slum area itself is usually one of the seeds of obsolescence which is producing the decline of the area. At the time at which the old dwellings in it were built, their sizes and characters and their distribution on the land may have been appropriate to the population and uses for which they were intended; but the sizes, locations and characters of buildings appropriate for new housing may and usually will not fit at all into the existing lot and street layout of the area, and drastic changes in lot layout, involving an assembling of the land and its redistribution in an entirely different subdivision, will be necessary before any modern housing could be constructed, and this requires a different street layout, a relocation of some streets, abandonment of others and an enlargement of others, as well as relocations of or changes in the quantity of other open spaces. The replanning of the area itself is, therefore, another essential condition of a justifiable and sound rebuilding project.

We see, therefore, that before an intelligent decision can be made for the clearance

and rebuilding of a slum area, and before any intelligent decision can be made regarding the details of the purposes, location, extent and character of the structures to be erected within the area, the procedure which we know as city planning should be followed, namely, a survey for and the making of the comprehensive plan of the city to a degree which discloses the appropriate uses of the area and whether or not housing be amongst the appropriate uses and, if so, the character and quantity, in general, of such housing; then the comprehensive planning of the portion of the city of which the area is a part, carried to that degree of detail which would indicate the extent and location of the educational, recreational, commercial, communication, transportation, civic and other types of uses which would be required for the adequate servicing of the rehabilitated area and the consequent stabilization of its housing or other classes of developments; and then the replanning of the area itself to that still greater degree of particularity which would indicate, with a fair degree of definiteness, the appropriate locations of the housing structures, business structures, civic structures, streets, recreational spaces and the other functional uses of the land within the area which would tend to stabilize and protect the buildings and other structures as those come to be planned in still greater detail and constructed by the legislative and administrative officials and the architects, contractors and builders. Unless and until these various degrees of the planning of the city and of the part of the city in which the area is located and of the area itself be done, there can be no promise that the proposed slum clearance and rebuilding will justify itself or will not simply soon start a new period of decline and depreciation of social and material values.

So far the discussion has related to the type of housing project which proposes to clear an older, more or less central and built-up area. Do these same considerations apply, however, to low-cost housing in areas still undeveloped and which are usually further removed from the center of the city? Perhaps the community can afford some guess-work, impulsive small-scale activity of that nature; but for construction on a scale which represents a grappling with and real contribution to the solution of the city's housing problem, there is need for similar planning approach and procedure; and this for the very same reasons. True, the undeveloped area has not yet exhibited the declines in values and population which in the case of the slum area demonstrated that something was wrong; but the bareness of bare land is not necessarily a sign of health, and there can be no promise whatever that the proposed housing development will be better than an incipient slum or blighted district until and unless the application of city planning techniques indicates that the area is an appropriate place for housing of the proposed character and extent, that the city plan will tend to furnish the area with the commercial, educational, recreational, transportation and civic facilities which it will need for the preservation of its vitality and for good mental, physical and moral standards of its inhabitants, and that the

proposed layout of the area will be promotive of the protection of the area against premature decline of its human and material values.

For the reasons above outlined, a projected slum clearance or housing development may find its economic, moral and political bases in the city plan or in the results of city planning procedure, and indeed cannot possess these bases without this procedure. The legal justification may be found to be derived from the same planning procedure, and for the very same reasons; for, fundamentally, legal validity is a derivative of intellectual and moral validity. The concept "reasonable" in American jurisprudence and constitutional law means, in essence, intellectual and moral genuineness as contrasted with guesswork, slovenliness, whim, emotionalism or corruption.

Two major legal problems loom up before us in the movement for large-scale, low-cost housing. One is the question of the constitutionality, under the state and national constitutions, of raising and applying public funds and of appropriating property, by the exercise of the taxation and eminent domain powers, for any such purpose. Some of the constitutions employ the phrase "public purpose," others "public use," in their taxation and eminent domain provisions. The fact that a proposed enterprise will indirectly be of great public benefit is not sufficient, according to the judicial decisions, to warrant the exercise of the taxation or eminent domain power. The courts do not, however, interpret the expression "public purpose" or "public use" so narrowly as to limit it to actual physical occupation by a public body or official or to activities directly conducted by public officials or employees. The dividing line between constitutional validity and invalidity lies somewhere between these extremes of indirect public benefit, on the one hand, and, on the other hand, actual physical occupation or use by public bodies, officials or employees; and, like other constitutional dividing lines, this line is capable of shifting and moving in the light of new experience and new knowledge concerning social needs.

There are authoritative decisions to the effect that the use of property by private persons for their own dwelling is not a public use; and the mere quantitative amount of such use, the mere largeness of the scale of that use, may not, in and of itself, prove to be sufficient to move the constitutional dividing line as far or as speedily as we deem necessary for good housing. If, however, the results of a careful and thorough city planning investigation and procedure demonstrate that a proposed clearance or housing project is justified as a matter of good city layout and development, and that the project is so interrelated with the city's own present and prospective investments in public schools and other public buildings, in playground and other recreational spaces, and in public streets and other public utilities for communication, transportation, sanitation and so on, that the sound, economic and efficient locating and constructing of these public buildings, utilities and grounds are interdependent with and upon the housing development; and if, further, the im-

portance of the proposed new housing from the point of view of the reduction of disease and delinquency and promotion of a decent quality of living be shown, and further that the necessary housing is not likely to be furnished by private capital or through the ordinary processes of private finance, trade and industry, then the city planning procedure may be found to have furnished sufficient proof that the clearance and housing enterprise will not merely benefit the public indirectly, but will be a direct public purpose or public use in the constitutional sense.

The cost of the property to be acquired for a slum clearance and housing development has, of course, a rather decisive effect upon the success of the effort to translate the project into accomplishment and upon the social and financial consequences of that accomplishment. This problem of property-costs turns somewhat upon the principles of law governing compensation in actions for the appropriation of private property for public use. The general principle is that the owner is to be paid the value of his property. What factors of value will be recognized by the courts and what are the modes of proof of those factors are questions which present the second legal problem or obstacle to be solved or surmounted on the road to good housing. The courts hold that the land is to be valued according to the use or uses for which it is appropriate. In the trial of a condemnation case, the experts employed by the property owner allow their fancies to roam freely, speculatively and imaginatively on this subject. Physically a piece of land is appropriate for almost any kind of use, residential, commercial, civic, industrial, recreational or what not. In that sense, land in the Desert of Sahara would be appropriate for a central heating plant. Mere physical appropriateness cannot be the test, but rather the appropriateness of the location for a functional use or uses. Little thought ought to be necessary to realize that the appropriate functional use of the land in question is dependent on the appropriate functional uses of other land located not only in the same neighborhood but in other parts of the city. The entire land within the city cannot be appropriate for dwelling purposes; for the people of the city cannot occupy more dwelling space than will house all of the population and they need other uses of the land, such as streets and stores and parks and schools. The appropriateness of a specific piece of land for dwelling purposes results from or is inextricably bound up with the appropriateness of other locations for streets and stores and factories and parks and schools and the other uses which go to make up a city; and one cannot know which areas or spaces are appropriate for the dwelling uses without knowing something about the location of those appropriate for the other uses. Obviously the same planning data and considerations and principles which result in the allocation of an area to low-cost housing use furnish reasonable (that is, non-guesswork and non-speculative) and strong evidence that the land of that area is appropriate for low-cost housing and that the compensation to be paid should be measured accordingly.

The story is told of a wealthy but rather parsimonious man who, strolling along

the street, met his friend, a distinguished and successful lawyer. Chatterily he put a question of law to the lawyer, who then and there answered it. The question was not purely academic; for the rich man had on his hands a situation which required him to make a decision turning on the answer to that very question of law. He proceeded to follow the advice, and thereby suffered a considerable financial loss. Thereafter, on again meeting his lawyer friend, he complained about the advice which had resulted so adversely. On being asked how much he had paid for the advice, he answered that he had paid nothing whatever for it; whereupon he was informed that perhaps the advice which he had received was worth exactly what he had paid for it. The same measure of value may apply to the advice here given; but, for whatever it may prove to be worth, the suggestion is hereby ventured that communities contemplating slum clearance and large-scale housing and, therefore, having to prepare for determinations, amicable or contested, of the amounts to be paid for the necessary lands, may find the time, effort and money spent on city planning procedure to be a shrewd and productive investment.

Which would be as it should be. For the community ought not place its housing in inappropriate areas and ought to be prepared to so control the development of its territory as to protect the housing against premature decline and decay and to furnish the services which will be needed for that protection. This means planning the city's lay-out to the full extent necessary for determining the appropriate housing areas and for assuring that protection. The future cannot be known or estimated with a certainty which eliminates all risks. But unquestionably the slums and blighted districts have resulted to some extent from past planlessness, that is, from deteriorating influences, some of which were avoidable through planning. We can reduce the guess-work and speculative factors in the development of our urban areas. These factors, including speculative land values, have contributed to the social evils which slums and bad housing symbolize and produce; and to the extent that a community has the intelligence and will-power to apply, with thoroughness and conscientiousness, city planning principles and methods and thereby reduce the speculative factors, it is entitled to the benefits of its action.

LAND ASSEMBLY FOR HOUSING DEVELOPMENTS

COLEMAN WOODBURY*

Although the tangible results of the present interest in housing have been slight, a few facts are beginning to emerge from the clouds of discussion and opinion. One of these facts is that housing developments, if they are to have any reasonable chance of success, particularly in blighted districts, should be planned on a large scale. Regardless of the types of houses to be built, unless a large area of land is included, the project can never be more than a qualified success and runs the risk of being a complete failure.

Support for this opinion comes in the main from two classes of people. Those who think of housing as the developing of economical and attractive residential districts demand large land areas in order that the site planners and architects may provide not only pleasant settings and surroundings for the houses but also the most usable spaces for recreation, schools, and other healthy social activities. They point out that developments on a large scale not only give greater amenities but also make possible considerable savings, in comparison with the old-style, lot-by-lot building, in construction and other development costs. For example, heavy traffic through the residential district can be avoided almost entirely with consequent increase in safety and in the quiet and pleasantness of the district. On the other hand, considerable expense can be saved in eliminating some nearly useless minor streets and in finishing the streets that are needed with pavement designed to accommodate only light local traffic.

Not only the housing planners but most of the property owners in blighted districts now recognize the necessity for projects covering a large area. Each owner sees that any attempt to improve his property alone is almost sure to fail unless it is supported by a program for the reclamation of the entire neighborhood. Scattered new buildings throughout a blighted and deteriorated section, no matter how well designed and constructed they may be, would soon be reduced to the level of their surroundings. This seems almost a self-evident statement, but in nearly every large city it can be supported by the actual experiences of some unduly optimistic and misguided property holders.

*Ph.D., Northwestern. Secretary of the Illinois State Housing Board, Associate Director of the National Association of Housing Officials, consultant to the Housing Division of the Public Works Administration. Formerly of the Institute for Economic Research and Assistant Professor of Economics at Northwestern University.

In some ways a blighted urban district is analogous to a swampy or an arid agricultural section. In both cases, to be of greatest use, the land requires a major improvement. The improvement cannot be carried out until some way is found of applying it on a large scale. Under most circumstances, one owner cannot successfully drain or irrigate his land, and one urban property holder cannot make headway against the blight that grips his district.

THE ESTABLISHED TECHNIQUE OF LAND ASSEMBLY

After the housing reformers and the property owners had recognized these facts, they turned to methods of bringing sizeable areas under single ownership or control. They found, of course, a procedure more or less familiar to real estate men, to the land departments of public utility companies and other corporations requiring a large amount of urban property, and to the corresponding divisions of municipal corporations. Briefly, this method consists of quietly securing options on as much of the area to be acquired as possible, often in the name of different persons and of dummy corporations, and buying the remainder at high prices, or, in the case of public corporations, exercising eminent domain in the manner prescribed by state law. Although remarkable ingenuity has been used by some specialists in this operation, a disturbingly large proportion of land assembly jobs have resulted in a very high price for the last parcels secured, or in slow and costly condemnation proceedings.

This procedure had been tried for housing developments prior to the recent popular interest in the subject. The results were as discouraging as might have been anticipated. The housing developers ran into all of the difficulties that had bedeviled others who had sought to secure large tracts of city land, "hold-outs," parcels without clear titles, and owners with strong sentimental attachments to their properties. However, one significant difference should be noted. If the land assembler is a private corporation or even a public body such as a park district, it usually can afford to pay an exorbitant price for some of the land it needs without too serious consequences. On the other hand, if the development is really low-cost housing, the margin of safety in costs must be so low that buying the property of a few "hold-outs," whether they be speculators or *bona fide* property owners with a strong attachment to their particular holdings, may very likely wreck the entire development. This again is a matter of experience as well as of reasonable expectation. Several carefully planned housing developments have been doomed before a single spadeful of earth has been turned or a single brick laid. The danger of being caught in this predicament probably has discouraged private capital from going into low-cost housing construction as much as any other one fact.

LAND ASSEMBLY POWERS UNDER STATE HOUSING LAWS

During the latter part of 1932 and the early part of 1933, limited dividend housing corporations under public control carried the hopes of most of those who wished to

see housing construction become a major part of the recovery program. In drafting the laws that made possible these corporations, the facts concerning land assembly, which have been sketched above, were given some consideration. As a result, of fifteen state laws dealing with limited dividend housing corporations, eleven give the corporations some form of eminent domain to aid them in assembling land.

In those distant days, no feature of the proposed legislation seemed more advanced or radical, depending on the critic, than these provisions. Today, however, it is difficult not to admit that the eminent domain powers given by these laws, even when they are extended to housing authorities or other public bodies, are insufficient tools to deal conclusively with the difficulties of land assembly. Their shortcomings can be discussed conveniently under two headings: (1) the cumbersomeness of the procedure required in most states; and (2) the confusion in rulings on the admissibility of evidence on land value.

PROCEDURE IN EMINENT DOMAIN

The question of housing as a public use is discussed briefly later in this article. Certainly those who see housing as a major economic activity of the next generation will breathe more easily if and when a few high state courts and the United States Supreme Court clearly recognize housing as a public use. As long, however, as the present condemnation procedure is required by the statutes of many states, housing developments will go ahead very slowly unless ways and means of avoiding condemnation in state courts can be found.

It is quite impossible to outline here the procedure required in all of the states in which new housing construction is a definite possibility. One of the worst features of many state laws, at least to the non-legal mind, is requiring an inexpert jury to listen to an almost endless amount of *ex parte* testimony on value, with few if any appraisals from an even moderately disinterested source.¹ Too often, as a result, the proceedings drag on for weeks² and the bewildered jurymen strike a rough average among the widely divergent appraisals given by so-called experts. This valuation often is very poor. The jury, knowing little of land values, often is impressed unduly by the reputation or manner of one or two of the witnesses. The confusion is increased by the length of the proceedings and the haggling of counsel over what is and what is not evidence of value. A few decades ago the procedure may have been satisfactory, but today very few people would contend that it is a method of securing quickly and economically the rather technical facts indicating values of city land.

The following outline of procedure in eminent domain cases was drafted during the earlier discussions of this power in housing development.³ Although by no

¹ Unfortunately, jury trial is guaranteed in such proceedings by the constitutions of many states.

² In Massachusetts and some other states condemnation is by administrative order, with compensation finally determined by action following the taking. See NICHOLS, EMINENT DOMAIN (2 ed. 1917) c. xxi.

³ By the author of this article. Approved and printed as an appendix to the Report of the Committee on Large Scale Operation, President's Conference on Home Building and Home Ownership. 3 PRESIDENT'S CONFERENCE, PROCEEDINGS (1932).

means exhaustive, it does present a procedure that is similar to that now in use in some states and deserves careful consideration.

1. Condemnation procedure should be conducted entirely separately from the fixing of local or benefit assessments.

2. Valuations should be set by a commission of three, selected by the court from a list of specially qualified persons appointed by all the judges in each city with jurisdiction over condemnation cases.

3. A time limit should be set by the court on the findings of the commission and should be extended only on application to the court by the commission.

4. All hearings before the commission should be public, with full public records kept. Both parties should be permitted to introduce such evidence as to valuation as might fall within the scope of the items entering into valuation as hereinafter set forth,⁴ and the commission should have power to examine any and all witnesses and to direct the presentation of additional permissible evidence where the commission considers it desirable.

5. Appeal by either party from the findings of the commission to a specially designated court should be provided.

6. The plaintiff in the condemnation suit should be permitted, after the award is made by the commission, to proceed at once to possess the property, provided he make payment to the court of such sums as have been awarded by the commission.

This procedure undoubtedly is an improvement on that now required in many states. It is based on the belief that the protection of the property owners lies not in an involved and tiresome procedure but in the ability and disinterestedness of those who appraise his property. Moreover, when housing is being urged as a part of a program to give employment and to stimulate economic recovery, a strong case can be made for allowing the agency seeking the land to take and enter upon it, upon posting of proper indemnity, even before the price of the property has been determined.⁵ This action of entry might be given within the discretion of the court. The court also might decide the amount to be posted by the taker; or the bond might be set at an amount equal to the assessed valuation of the property or some proportion or percentage of assessed value.

At the present time, one of the most expeditious procedures is that given to the United States for acquiring land for federal public purposes.⁶ Presumably this procedure can be used in acquiring land for housing construction to be carried on by the Public Works Emergency Housing Corporation. It consists, broadly, of filing in a federal court upon or at any time after the filing of the petition in condemnation a "declaration of taking" setting forth the authority under which and the use for which the lands are to be taken, a description of the lands and a plat of them, and a statement of the sum estimated by the taker to be just compensation for the property. Upon the filing of this declaration and the depositing of the monies for

⁴ See p. 219, *infra*.

⁵ See, e.g. Ohio Housing Authority Law, Ohio Laws 1933, 1st Spec. Sess., H. B. 19; New York Condemnation Law, N. Y. Cons. Laws (Cahill, 1930) c. 9, §24, and New York Conservation Law, *ibid.* c. 10, §§59, 777 (8). See also NICHOLS, *op. cit. supra* note 2, c. xxi.

⁶ 46 STAT. 1421 (1931), 40 U. S. C. A. (Supp.) §258a.

payment, title to the lands vests in the United States and the former owners have a right to just compensation for them. The court has the power to fix the time and the terms for surrendering possession of the property to the government and may pay over to the former owners any part or all of the amount deposited by the taker at such times as the court may think wise.

This federal procedure seems admirably suited to prompt and vigorous action. If it is not copied in some form into more state laws, in the near future most of the land acquisition for housing purposes probably will be done by federal agencies of one kind or another. Assuming a reasonable exercise of discretion by the federal courts, the property owners' rights to fair cash compensation would seem amply protected.

Aside from this statute and others⁷ designed to facilitate prompt entry upon land to be condemned by federal authorities, there is no special federal condemnation procedure. Instead it is expressly provided by statute⁸ that federal condemnation procedure should conform as nearly as may be practicable to state law, and the federal government is thereby saddled with the deficiencies so common among state condemnation statutes. To remedy this situation, a bill prescribing the procedure in condemnation cases instituted by the Attorney-General of the United States is now pending in Congress.⁹

EVIDENCES OF LAND VALUE

Courts of different states are far from agreement as to the facts that are admissible as evidence of property value in eminent domain cases. A complete catalogue of these differences and an analysis of them is quite beyond the scope of this paper. Two questions, however, should be discussed briefly. Should tax assessments be admitted as evidence of land value? Should prices at which options have been given or voluntary sales made by neighboring property owners to the condemner be considered in determining value?

Many cities' tax assessments probably are an accurate index of value, particularly for comparing the level of values in different sections of the city. They should be useful for estimating the value of the property to be taken by comparison with other

⁷ The Emergency Relief and Construction Act of 1932, c. 520, §305, 47 STAT. 722, 40 U. S. C. A. (Supp.) §258a (note), provided a still more expeditious procedure based on the above statute. It has never actually been employed, however. The Rivers and Harbors Act of 1918, 40 STAT. 911, 33 U. S. C. A. §594, authorizes the Secretary of War to take "immediate possession" of land upon the filing of the condemnation petition, provided the court finds that adequate security exists for the payment of compensation, by appropriation or by deposit or otherwise. This Act has been utilized successfully in flood control work where the condemnation of large areas was involved.

⁸ 25 STAT. 357 (1888), 40 U. S. C. A. §258.

⁹ S. 2647, 73rd Cong., 2nd Sess. (1934). At the time of writing, this bill had passed the Senate. It provides for the appointment of commissioners to determine awards but, unfortunately, permits any party to demand a common-law jury. The Supreme Court has never conclusively determined whether the Seventh Amendment necessitates a trial by jury in condemnation cases, but there is little reason to suppose that a jury will be held requisite. See Blair, *Federal Condemnation Proceedings and the Seventh Amendment* (1927) 41 HARV. L. REV. 29; Hines, *Does the Seventh Amendment . . . Require Jury Trials in all Condemnation Proceedings?* (1925) 11 VA. L. REV. 505. The bill is silent on rules of evidence as to value in condemnation cases.

land for which recent sales figures are introduced as evidence. If a city's assessment system is inadequate or discriminatory, this fact could be established with sufficient force to discount the assessed values in the minds of the jury or of the commission charged with valuing the property. Despite the rulings in many states against tax assessments in eminent domain cases, it is not at all uncommon for one side or the other to have the tax assessor or someone from his office as an expert witness.

Another general rule on evidence of value that deserves reconsideration excludes options or sales of property made to the taker in the condemnation proceeding. Thus a public body acquiring a site may reach an agreement with seventy-five per cent or more of the property owners as to a fair price for the land, but cannot submit these figures as evidence of the value of the land of the comparatively few owners against whom condemnation suits have to be brought. Strangely enough, the reasons given for excluding these facts as evidence are quite contradictory. Some courts believe that these figures on transfers or options are poor evidence of value because the body acquiring the property would be willing to pay considerably more than a fair cash value in order to avoid the delay and expense of a condemnation suit. The figures in question, therefore, are thought to be too high to be considered as evidence of fair market value. On the other hand, other decisions have excluded these figures on the ground that the property owner is at a disadvantage in bargaining with a public body that has powers of eminent domain and, therefore, would be willing to settle for a price somewhat below fair value.

No reasonable person would deny that both of these opinions correspond to possible situations in the negotiations between a purchaser and an owner. If, however, the voluntary seller and the agent of the purchaser were subject to cross-examination, it would seem that "agreements" in which one of these influences had been particularly strong might be excluded without ruling out entirely the figures of genuinely voluntary sales. Another possibility would be to allow these prices to be introduced as evidence only if supporting testimony would show that both parties considered the exchange to have been made at a fair and reasonable price and without compulsion or undue influence.

The following statement of principles on evidence of property value in eminent domain proceedings is submitted for study and criticism.¹⁰ It assumes a qualified commission as the primary agency to which evidence of value would be presented. These commissioners, by the nature of their qualification, would have a more acute critical sense as to property values than would ordinary jurymen and might be expected to consider more varying evidence of value without being misled by the less important ones. Certainly they could consider assessed values and voluntary transfers between the owner and the condemner without serious risk of giving undue

¹⁰ These principles were presented in a report by the writer to the Committee on Large Scale Operations, President's Conference on Home Building and Home Ownership, which was approved and adopted. See 3 PRESIDENT'S CONFERENCE, PROCEEDINGS (1932).

weight to slipshod assessments or to prices that were markedly effected by fear of or desire to avoid condemnation proceedings.

1. The following evidences or indications of value of the property taken should be considered by the commission whenever possible, and the report of the commission to the court should include a clear summary of the evidence submitted on each of the following points:

(a) Transfers of properties in the same areas as those under condemnation, which can be shown to be between willing buyers and willing sellers, including transfers made between private owners and the city or between private owners and the housing company for the same or similar purposes as that for which the condemnation action was begun.

(b) Assessed valuation for purposes of taxation and the stipulated ratio of assessed to true value for the preceding five years.

(c) The estimated gross and net incomes receivable from the most productive use to which the land may reasonably be put in the near future; the estimated length of time before such use could profitably be established; and the rate at which the net income should be capitalized taking account of all risks involved in establishing such a use. In cases in which the present use is not the most productive use, the value of the land alone, as indicated by this method, should not exceed the capitalized net income minus the total cost of constructing the building or buildings that would be required to make possible the most productive use.

2. In determining fair compensation for the property to be taken, no evidence should be admitted which reflects the probable influence of the proposed improvement on property values.

3. In no case should income receivable from uses contrary to the health or other laws of the municipality or state, or transfer prices based on the expectancy of such use, be admitted as evidence of land value.

4. Values of existing buildings should be determined by the cost of replacing the present structures minus an allowance for depreciation and obsolescence. Residential buildings declared by the municipal health department to be unfit for human habitation should be evaluated at their scrap value minus the cost of wrecking.

IS HOUSING A PUBLIC PURPOSE?

In general, the state supreme courts have followed one of two lines in defining what is and what is not a public use.¹¹ Those following the stricter construction have taken public use to mean use by, or at least the right of use by, all or a large part of the community. Thus the Illinois Supreme Court in the case of *Gaylord v. Sanitary District* said:

¹¹ In most industrial states the power of eminent domain has been granted by statute to a large number of uses. A fairly typical state in this respect is Illinois, which allows condemnation by cities and villages for water works and reservoirs, sewers, streets and alleys, levees and embankments, public coliseums, municipal convention halls, harbor structures and facilities, libraries and water courses. In addition, the more common public utilities enterprises (including railroads, electric light and power companies, gas companies, telephone companies), schools, and parks have this power. Other agencies that may exercise eminent domain include counties (for public buildings), canal companies, cemeteries, drainage districts, ferries, mills, mines, mosquito abatement districts, warehouses, roads, public and toll bridges. Although some of the agencies listed rarely use this power and some of them have not tested this right in court, such a list does raise some hope that soon low-cost housing may be recognized to be at least as public in character as, say, cemeteries or mills.

To constitute a public use something more than a mere benefit to the public must flow from the contemplated improvement. The public must be to some extent entitled to use or enjoy the property, not as a mere favor or by permission of the owner, but by right.¹²

The supreme courts of another group of states, taking a somewhat broader view of public use, make it roughly synonymous with unmistakable public benefit or advantage. For example, in the case of *State ex rel. Twin City Building and Investment Company v. Houghton*,¹³ the court upheld a statute providing for the restriction of uses in a residential district and the compensation for the privilege "taken" by benefit assessments in property. This taking was deemed for public use even though, of course, it gave the public no physical use of the privilege taken and though only a limited portion of the public would be directly benefited.

This opinion also included an excellent statement of the attitude generally taken by courts in the more liberal definitions of public use.¹⁴ The Court said:

The notion of what is public use changes from time to time. Public use expands with the new needs created by the advance of civilization and the modern tendency of the people to crowd into large cities. Such a taking as here proposed could not possibly have been thought a taking for public use at the time of the adoption of our constitution when the state was practically a wilderness without a single city worthy of the name. The term public use is flexible and can not be limited to the public use known at the time of the forming of the constitution.¹⁵

Housing as a public use apparently has not been passed upon by a high state court in an action brought in respect to eminent domain proceedings. Two state supreme courts, however, have passed in comparatively recent years on housing as a public purpose for which state funds were to be spent. Unfortunately, in neither of these cases was the question of slum and blighted area housing raised as clearly as it might be today.

The earlier decision was by the Supreme Judicial Court of Massachusetts in 1912. It was an advisory opinion.¹⁶ A bill had been drafted to authorize the Homestead Commission of Massachusetts to purchase, develop, rent, manage, and sell residential real estate. The Court advised that this was not a public use for which public monies could be spent.¹⁷ It was clearly stated in the opinion, however, that if public money

¹² *Gaylord v. Sanitary District*, 204 Ill. 576, 584, 68 N. E. 522, 524 (1903).

¹³ 144 Minn. 1, 176 N. W. 159 (1920).

¹⁴ Of course, this classification of state courts on the definition of public use is very general. In many states in which the courts have quite consistently followed one line of definition, it is possible to find opinions that seem to be decidedly "out of line." For a classification of state courts on this point, see NICHOLS, *op. cit. supra* note 2, §40.

¹⁵ 144 Minn. at 16, 176 N. W. at 161.

¹⁶ *In re Opinion of the Justices*, 211 Mass. 624, 98 N. E. 611 (1912).

¹⁷ Largely as a result of this decision an amendment was made to the state constitution in 1915. The amendment, Chapter 6, Article 43, reads as follows: "The general court shall have power to authorize the commonwealth to take land, to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost." It was ratified on November 2, 1915, by a popular vote of 284,568 to 95,148.

could be spent for this purpose, eminent domain might also be exercised to achieve the ends set forth. In fact, the opinion dealt at some length with the possible difficulty of the Homestead Commission condemning the property of one free holder in order to turn it over to another person. The intent of the bill was quite clearly that the Commission would sell the properties sooner or later to their occupants and thus encourage home ownership.

One of the last paragraphs in this opinion gives an interesting sidelight on the housing thought of that day. The Court said:

It may be urged that the measure is aimed at mitigating the evils of overcrowded tenements and unhealthy slums. These evils are a proper subject for the exercise of the police power. Through the enactment of building ordinances, regulations and inspection as to housing and provisions for light and air lies a broad field for the suppression of mischiefs of this kind.¹⁸

With the experience that has accumulated during the last twenty years, it seems very doubtful that any high court of an industrial state could today make so naïve and optimistic a statement of the possibilities of housing improvement by way of building ordinances and other restrictive legislation. Certainly one of the key arguments in the case for housing as a public purpose is the fact that restrictive police power measures have not removed slums nor stopped blight. More active measures are needed and of those proposed the most likely at present seems to be the rebuilding of large areas into modern residential districts. Eminent domain is thought to be necessary to secure sufficiently large tracts to give this method a reasonable trial.

The second case on housing as a public use, *Green v. Frazier*,¹⁹ was decided by the Supreme Court of North Dakota shortly after the War. The statute in question was the Home Building Act,²⁰ one of a series of statutes passed by the North Dakota legislature (in a program including two amendments to the constitution) giving the Industrial Commission of the state power to engage in several economic activities, including the marketing and storage of farm products, mortgage lending, and the building of low-cost homes. This act was attacked on several grounds, including the assertion that the building of homes was not a public purpose for which state funds properly could be spent. The Court held it valid, remarking that it best exemplified the "broad public policy" of these laws and constitutional amendments "intended to be beneficial to every citizen of the state as well as the state as such."²¹

The opinion dealt with so many issues that the housing question was not discussed in as much detail or in as firm a manner as one would wish. The Court gave considerable attention to the plight of tenants, particularly tenant farmers, and went at length into the benefits that would accrue to the state if it would encourage home ownership. This entire argument probably will be given relatively little attention in cases to be brought in the near future on housing as a public purpose. Whatever the merits of home ownership may be, very few of those most interested in large

¹⁸ 211 Mass. at 630, 98 N. E. at 614.

¹⁹ 44 N. D. 395, 176 N. W. 11 (1920).

²⁰ N. D. Laws, 1919, c. 150.

²¹ 44 N. D. at 422, 176 N. W. at 21.

scale housing developments believe that people of very low economic status should be encouraged at the present to invest a large proportion of their meagre savings in residential real estate.

The decision of the United States Supreme Court affirming the North Dakota Court's decision is discussed below.²²

A more recent case that is often cited on this question is *Simon v. O'Toole*.²³ This is a decision of the Supreme Court of New Jersey that was affirmed later by the Court of Errors and Appeals.²⁴ Strangely enough, no separate opinion was rendered by the higher state court although the decision of the court below was affirmed only by a vote of six to five.

As a matter of fact, in this opinion the Court did not pass on the question of whether housing is a public use. The city of Newark, in conformity with state laws passed in 1929²⁵ had made an agreement with the Prudential Insurance Company whereby the insurance company agreed to secure title to as much of two city blocks as it could in a blighted area in Newark, and the city agreed to buy from the Prudential or, if necessary, to condemn from other property owners, a strip of land 140 feet wide running through the middle of these blocks for use as a park and playground.

Although the Court based its decision on the ground that the land was to be devoted to public parks and playgrounds, a well-established public use, it recognized that the major purpose of both the state enabling legislation and the city's action was to make possible a housing development by taking a portion of the usual land cost from the shoulders of the developing company. Perhaps a court may yet be persuaded that in fact playgrounds and sanitary houses are integrated parts of any well-planned neighborhood.

In many ways, one of the most interesting cases on the question of public use, although it is not concerned directly with housing, is *Dingley v. City of Boston*.²⁶ The Massachusetts court upheld a statute²⁷ authorizing the city of Boston to condemn an area of low-lying land, of about sixteen acres in extent, from which sewage drained into Back Bay, for the purpose of raising the land sufficiently to enable the drainage of sewage into deep water and thereby remedy a condition which constituted a nuisance to the public health.

Property owners sought to enjoin the wrecking of buildings, contending in part that to condemn the fee in the land was an improper method of abating the nuisance. The Court, however, pointed out that the interests of the property owners would be very difficult of adjustment after the land had been raised and termed the plan of condemning of the fee "the most simple and equitable that could be adopted." Its decision was cited with approval by the United States Supreme Court in *Sweet v. Rechel*,²⁸ a case arising out of the same improvement project.

²² See p. 223, *infra*.

²³ *Simon v. O'Toole*, 108 N. J. L. 549, 158 Atl. 543 (1932).

²⁴ N. J. Laws 1929, c. 201, 202.

²⁵ Mass. Stat. 1867, c. 308.

²⁶ 108 N. J. L. 32, 155 Atl. 449 (1931).

²⁷ 100 Mass. 544 (1868).

²⁸ 159 U. S. 380, 16 Sup. Ct. 43 (1895).

A rather close analogy can be drawn between this action of the city of Boston and the program outlined at the present time by various public bodies for the rehabilitation of blighted or slum areas. The chief difficulty would seem to be to establish clearly in the mind of the court the fact that blighted and deteriorating housing is quite as much a matter of public concern as a safe method of sewage disposal. If this can be done, the weight of these decisions ought certainly to be on the side of upholding housing as a public use.²⁹

In all probability a case on the constitutionality of the taking will reach the United States Supreme Court in the near future, especially if condemnation of land for housing is undertaken under the federal statute described above. Here, as in most of the state courts, few, if any, decisions are directly in point. In affirming the North Dakota decision in *Green v. Frazier*, discussed above,³⁰ the United States Supreme Court stated:

As we have said, the question for us to consider and determine is whether this system of legislation is violative of the Federal Constitution because it amounts to a taking of property without due process of law. The precise question herein involved, so far as we have been able to discover, has never been presented to this court. The nearest approach to it is found in *Jones v. Portland*, 245 U. S. 217 . . . in which we held that an act of the state of Maine, authorizing cities or towns to establish and maintain wood, coal, and fuel yards for the purpose of selling these necessities to the inhabitants of cities and towns, did not deprive taxpayers of due process of law within the meaning of the 14th Amendment. In that case we reiterated the attitude of this court towards state legislation, and repeated what had been said before, that what was or was not a public use was a question concerning which local authority, legislative and judicial, had especial means of securing information to enable them to form a judgment; and particularly, that the judgment of the highest court of the state, declaring a given use to be public in its nature, would be accepted by this court unless clearly unfounded. In that case the previous decisions of the court sustaining this proposition were cited with approval, and a quotation was made from the opinion of the supreme court of Maine, justifying the legislation under the conditions prevailing in that state. We think the principle of that decision is applicable here.³¹

Although the Court here held housing construction to be a public purpose under the conditions existing at the time, three facts should be noted. In the first place, the Court did not pass on housing as a *federal* public purpose, as it will have to if a case is brought under federal statute.³² Secondly, the opinion stressed throughout the weight to be given to the opinions and findings of state legislatures and state courts. This consideration, of course, will not obtain in proceedings brought directly

²⁹ The fact that these cases involved the treatment of a considerable tract of land is also worthy of note. The term, "zone condemnation," has sometimes been applied to this procedure to distinguish it from less extensive uses of eminent domain for rights of way or smaller land areas. It describes quite accurately what may be necessary in securing suitable sites for housing developments.

³⁰ See p. 221, *supra*.

³¹ *Green v. Frazier*, 253 U. S. 233, 241, 40 Sup. Ct. 499, 502 (1920).

³² The question whether the federal government may constitutionally exercise its eminent domain powers for a purpose not within the scope of the powers expressly delegated to it by the Constitution is discussed in Seaks, *A Note on the Power of the Federal Government to Condemn Land for Housing*, *infra*, p. 232.

under federal statute. Finally, the action did not primarily concern eminent domain but was brought to prevent the use of public monies for what was alleged to be not a public purpose.³³

Those who hope that the United States Supreme Court will uphold housing as a public use when the question is presented directly to it, can point to many *dicta* of the Court that indicate a friendliness toward extending the concept of public use, if the extension rests upon economic and social facts. In the case of *Fallbrook Irrigation District v. Bradley*³⁴ the Court passed upon a California statute that authorized the formation of irrigation districts with power to levy assessments and to condemn or otherwise acquire land. The case was brought to resist the sale of land in default on assessment levies. The Court said:

While the consideration that the work of irrigation must be abandoned if the use of the water may not be held to be or constitute a public use is not to be regarded as conclusive in favor of such use, yet that fact is in this case a most important consideration. Millions of acres of land otherwise cultivatable must be left in their present arid and worthless condition, and an effectual obstacle will therefore remain in the way of the advance of a large portion of the State in material wealth and prosperity. To irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to the landowners, or even to any one section of the State. The fact that the use of the water is limited to the landowner is not therefore a fatal objection to this legislation. It is not essential that the entire community or even any considerable portion thereof should directly enjoy or participate in any improvement in order to constitute a public use.³⁵

The case of *Rindge Co. et al. v. County of Los Angeles*³⁶ dealt with the condemnation of land for a highway running twenty miles through a private estate bordering the ocean. The branch road for which land was condemned was connected with the public highway system only at one end. It was primarily a pleasure drive. In upholding the condemnation action the Court said:

It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in any improvement in order to constitute a public use. . . . Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matters of public health, recreation and enjoyment. . . . And manifestly, in these days of general public travel in motor cars

³³ The connection between the "public purpose" cases in federal courts involving taxation and those concerned with eminent domain was pointed out in the Court's opinion in *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112, 158, 17 Sup. Ct. 56, 63 (1896). After remarking that the due process clause of the Fourteenth Amendment, applying to state legislation, is not accompanied by any express restriction against the taking of property for any but a public use, as is contained in the Fifth Amendment, applying to federal legislation, the Court continued:

"It is claimed, however, that the citizen is deprived of his property without due process of law, if it be taken by or under state authority for any other than a public use, either under the guise of taxation or by the assumption of the right of eminent domain. In that way the question whether private property has been taken for any other than a public use becomes material in this court, even where the taking is under the authority of the State instead of the Federal government."

³⁴ *Supra* note 33.

³⁵ 164 U. S. at 161, 17 Sup. Ct. at 64.

³⁶ 62 U. S. 700, 43 Sup. Ct. 689 (1923).

for health and recreation, such a highway as this, extending for more than twenty miles along the shores of the Pacific at the base of a range of mountains, must be regarded as a public use.³⁷

In summary then—the determination of the courts on housing as a public use is yet to be made. The attitude of the Supreme Court on definitions of public use is decidedly encouraging to those who believe that eminent domain is a power essential to a vigorous housing program. The state supreme courts probably will divide on this question unless influenced by a strong opinion upholding housing as a federal public purpose. In cases before either state or federal courts, the need for large tracts of land in any well-planned housing development must be emphasized. The courts must have the chance to see the actual difficulties to be faced in attempting to assemble land for low-cost urban housing. This must be supplemented by facts on the failure of unaided private enterprise under modern urban conditions, with or without police power restrictions, to provide healthful, sanitary housing for the lower-income classes.

FIRST STEPS IN ASSEMBLING THE LAND

Eminent domain seems to be an essential power in the rebuilding of blighted and slum districts.³⁸ If housing is upheld as a public purpose and reasonably rapid procedure in eminent domain can be established for housing authorities and other public and quasi-public agencies, a long step will have been taken toward a genuine attempt in city rebuilding. However, it would be a serious blunder to assume that securing the power of eminent domain is all that has to be done in assembling land for housing purposes. Assuming that the power has been granted and upheld, what are the other major problems that will have to be faced at once?³⁹

³⁷ *Ibid.* at 707, 43 Sup. Ct. at 692.

³⁸ The writer has assumed throughout this article that public agencies of one kind or another will be in charge of the housing program in the near future at least. The inadequacies of limited dividend corporations under present circumstances have been clearly shown. For this reason, no attempt has been made to discuss here the various plans devised to attract, and if necessary compel, private land owners to pool their holdings in order that a reasonably large district can be repaired or reconstructed as a unit. The writer believes that some of these plans have considerable promise and should be given a trial. The housing that they will make possible, however, in most cases will be at higher rentals than can be provided by public bodies with the subsidy now available from the PWA.

This does not mean that these ideas may not have an important role in the future housing program in this country. This housing program certainly should include more than slum clearance. Thousands of families in the cities of this country do not live in slums nor in blighted areas but still have to occupy housing that is mediocre in every way and far below standards that reasonably can be expected from the present knowledge of community planning and construction. The writer, however, had to limit this article at some point and has preferred to try to focus the discussion on the problems that in the immediate future will face the agencies that will attempt low-cost housing. These agencies will be public bodies of one kind or another.

The chief exponents of these pooling schemes are Clarence Perry, *The Rebuilding of Blighted Areas*, Regional Plan Association, New York City (1933), especially Part Two; Herbert U. Nelson, Executive Secretary of the National Association of Real Estate Boards (see recent issues of the *National Real Estate Journal*); Thomas S. Holden (see recent issues of the *Architectural Record* and *Architectural Forum*); and Henry K. Holsman, *Rehabilitating Blighted Areas*, Architects Club of Chicago (1932). See also Nelson, *supra* p. 164; Blucher, *infra* p. 248.

³⁹ No attempt has been made in this article to go into the details of land assembly procedure except on those points that seem crucial in a program of assembly for housing. Questions of procedure, as for

In the first place, the initial steps in land assembly in different communities must be determined with care. To assume that a start can be made in almost any fashion and that errors can be covered up later by eminent domain proceedings is very short-sighted. The public reaction to the entire housing program of a city may well be determined by the way in which land is assembled. In almost every case, at least in the immediate future, speed will be demanded in acquiring property. This speed should not be secured at the cost of a ruthless method that will arouse wide-spread public antagonism. At the same time, land costs must be kept as low as is possible. To achieve the finest balance among these and some minor considerations will be by no means an easy job.

The advice of nearly all experienced land assemblers is to start by securing options or conditional sales agreements from as many of the property owners as possible. This, as has been pointed out above, has been the traditional method. Its effectiveness at the present time, however, may be questioned seriously. The present market for land in blighted districts of cities is generally so very quiet and the probable purchasers are so few that within a few hours after any considerable number of land owners have been approached, they and their neighbors for some distance around will probably realize exactly what is being done. In some communities, moreover, a strong feeling exists that the government ought always to announce its plans before undertaking any enterprise involving large sums of money. This may be and probably is, in many cases, an indefensible opinion, but deference to it in some communities might easily outweigh the doubtful advantages of the method of quiet options.

In other cities, it will be necessary, in order to overcome opposition to a housing program, to engage in public debate and discussion through the press and otherwise for some time before actual work on a development can be begun. A variant of this will be the necessity of a wide-spread discussion of the areas to be undertaken either by a local housing authority or by a federal agency. These circumstances clearly rule out any effective taking of secret options. For the first few developments, at least, it may be possible "to play off one district against another"—to say quite frankly that housing developments are under consideration for two out of say six or eight possible areas and that it is the intention of the housing agency to start first in those areas in which good titles to the land can be secured most quickly and most cheaply. No one can foretell the possible results of this procedure in every city. It would seem to have a good chance of success at the present time, in some cities at least. It will not be very useful later, however, when the more reasonable program of the housing agencies will be to expand the developments that they will have begun.

Another advantage of a non-secret method is that it will allow the housing agency to mobilize the forces in the areas that wish to see the development go ahead. Obstacles, for example, what kinds of instruments to use in voluntary negotiations—an option, a real estate contract, or a deposit agreement for placing a warranty deed in escrow—are important but can be decided readily by those who know the business custom and experience with the different devices in different cities.

nate land holders in most blighted areas probably would be little influenced by widespread publicity in the big daily newspapers and other city-wide institutions. The little property owner probably would say that if a governmental agency backed by the rich and powerful in the community is anxious to have his property, it should pay his price. He may be more susceptible, however, to pressure from his neighboring property owners who have agreed to sell and have given an option or have a purchase agreement with the housing agency conditioned upon the agency securing similar agreements with all or a large proportion of the land owners in the neighborhood.

Another possible line of attack would be to institute condemnation proceedings at the outset against all of the property that is needed for the development. Probably in some communities this might be done with no intention of carrying through the action unless voluntary agreements could be reached with a large proportion of the land owners. The intention of the housing agency to purchase for a reasonable price could be announced at the same time that the eminent domain proceedings were begun. This method might have two advantages. It would indicate to the property owner that the housing agency was willing to meet him on a reasonable, voluntary sale but that it was also determined not to be held up by a few obstinate individuals. Probably a more substantial advantage would be shutting out "wash sales," faked mortgages, and other manoeuvres that might be made to build up evidence of higher land values.

Under some circumstances, of course, it may seem wise to go ahead with the condemnation proceedings against all of the properties and to pay the awards as they are made. Under the federal statute this might save time and be a direct and effective procedure. It does have the danger, however, of being made to seem to be high-handed and arbitrary.

Both of the programs calling for early filing of condemnation suits have in common one major advantage. If the preliminaries of the program have been shrewdly and cautiously carried out, the court action should shut out most of the professional speculators. The corollary of this is, of course, that the money paid for the land would go largely to *bona fide* property owners, many of whom may have held the property with little or no profit for many years. Some slum properties, of course, have been most profitable investments, but even in regard to them it would seem better that the payment should go to the property owner than to some speculator whose only interest in the property is to secure some title or estate in it for which he will have to be paid by the public agency. Obviously this species of land shark can operate more successfully against the small, uninformed holder of an unprofitable property than against the large owner who over a period of years may have secured a high return on his investment. In any event, one of the chief objectives of the land assembly program should be to squeeze out the land speculator.

The issues raised above can not be answered in general terms. It is more than

an excuse to avoid answering knotty problems to say that the method of procedure can be determined only in the light of all the circumstances attending the program in any city. Variations and combinations are, of course, possible. It may be desirable to follow different methods for the different areas that are to be taken in the large cities.

HEAVILY MORTGAGED PROPERTIES

Another major problem, in many ways the most disquieting of all, is presented by the holder of heavily mortgaged properties that have to be acquired in the housing program. The unmortgaged land holder or the one with a conservative mortgage on his property presents no very grave difficulty. Land values have declined sharply in blighted districts in recent years and probably will decline even more in the future. The holder of unencumbered land who sells at the present time or whose land is condemned probably will lose something of his investment, particularly if he bought during the wild boom of the 20's; but, after all, nearly all investments have declined in value and by securing cash in place of title to land in a deteriorating district, he will be, and in many cases will recognize that he will be, better off.

The holder of heavily mortgaged properties, however, can not be disposed of so easily. It must be recognized, furthermore, that in many blighted districts he probably is in the majority. A recent study of the Lower East Side of New York showed that about ninety per cent of the properties were mortgaged. Undoubtedly many of the mortgages are based on the fantastic land values that have been assumed for years for that district. In Chicago, a study of two sizeable blighted areas has shown that from two-thirds to four-fifths of the properties are mortgaged and that in some sections the ratio of outstanding mortgage indebtedness to assessed value, or other measures of probable purchase price, is high. No one knows in how many cases—but it probably would be a considerable number—sales at present market value, whether induced by the financial condition of the land owner, by group pressure, or by eminent domain, would wipe out the equity in the property completely.

Of course, one may say that this is just one of the unfortunate results that attend any program of economic advance; that the automobile industry bankrupted the carriage manufacturers, etc., etc. The heavily mortgaged owner is in the same position as anyone else who holds property on a margin. He has taken the chance of large return on his actual investment and of an increment in the value of his holdings and must, therefore, be expected to shoulder the losses that come his way. Further, it may be argued with some force that his equity does not exist at the present time and that the only reason he does not realize this is the absence of market quotations on the particular kind of property in which he has invested. If a housing agency forces a sale in one way or another, the owner may blame the agency for his financial plight but, as a matter of fact, it did not cause his loss but only revealed it clearly to him. To the reply that his equity might be revived with a general increase in property values, it may be contended that the chances of a widespread revival of

values in blighted and residential districts is so slight as to be negligible. From this line of argument it follows that the housing program should be driven ahead vigorously, that the hardships and losses that it entails will be much more than counter-balanced by the benefits and advantages that it will create.

On the other hand, it may be said that, financial technicalities⁴⁰ aside, the land owner was only one of several people who put their money into the development of the district; that his judgment was not much worse than that of the mortgagees; and that in many cases the mortgagee has made no attempt to develop the district, whereas the land owner has tried, although the job has been quite beyond the means at his disposal. Again some of the land owners in the blighted districts are victims of the bally-hoo for home ownership that has been sponsored by influential groups, including, in some cases, government officials of considerable position. Furthermore, the federal government has tried in various ways to protect the owners of selected kinds of properties from feeling the full effects of the depreciation in property values (e.g. through the Home Owners Loan Corporation). Emphasizing these facts and opinions, it seems somewhat incongruous, not to say unfair, for a public housing agency to force considerable losses on some of the land owners in an area that is to be rebuilt. (On many properties, of course, mortgagees and other lien holders will suffer to some extent as well).

This argument will appeal strongly to some people, but not to others. Without going into a lengthy discussion of the questions raised, it may be said that an attempt to mediate between the property holders and the mortgagees might mitigate somewhat the hardships of the land assembly program and, for this very reason, might expedite the job of securing the land. Certainly mortgage holders would realize that in many cases their interest would be better served by taking a cash settlement somewhat less than the face value of their paper than by forcing the housing agency to build elsewhere in the city. In this latter event, not only would the mortgage holders in question not receive any cash payment, but their security might be lessened by the competition of the new development with the old and depreciating properties against which their loans are outstanding. Of course, to take on the added duties of mediator between the property owner and his creditors will be a considerable addition to the responsibilities and worries of the housing agency. These added duties should be weighed against the savings in time and effort in negotiation with the property owners themselves.⁴¹

⁴⁰ This phrase may beg the question.

⁴¹ The last sentence of the federal statute discussed *supra* p. 000, reads: "The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable." Probably this would not be taken to mean that the federal courts will combine with the eminent domain action, bankruptcy proceedings or a less formal compromise of a property holder's creditors. One can hope, however, that the court in some cases might suggest, if not order, the scaling down of outstanding debts so that the equity owner would not be completely wiped out by the condemnation proceeding.

FACTUAL BASIS FOR LAND VALUES

Underlying most of the difficulties of land assembly is the absence of any factual or quasi-scientific basis for estimating land values in the blighted districts. This is a matter that concerns not only housing agencies but tax assessors, mortgage lenders and all actual or prospective property owners in these districts. If one looks at a use map of a large metropolitan city, he will see quite clearly that one of the largest land uses is low-cost housing. If he looks, however, at a land value map, he will see relatively few, if any, large districts (except on the fringes of the city) that are valued on this use. This is due, of course, to the fact that land owners, aided and abetted by real estate men and mortgage lenders, have continually based their ideas of value on some anticipated or hoped-for use that could support a higher land value. Zoning ordinances in recent years have helped to keep alive much irrational optimism on the future uses of land.

Of course, no one will deny that many slums and blighted districts are within areas the probable future use of which is not residential. Land values in such areas should be high enough to preclude residential construction, and every effort should be made to care for as many as possible of the present occupants in other districts. Certainly, if city and community planning mean anything, they should mean that the housing of people of low income should not be allowed to degenerate into a mere tax-paying use for oncoming commercial, industrial, and high-cost residential uses.

On the other hand, much of the land now valued by its owners at values that can be justified only on the expectancy of a future high-income use will never be so used, and the values that have been built up are, therefore, fictitious. The mere fact that exchanges have taken place at these figures does not establish them as a fair or sound market value. The economic theories of market operations as a guide to economic activity are based on the assumption that buyers and sellers not only are seeking their own pecuniary interest but that they are well-informed on the commodities being exchanged. Many people, including not a few learned courts, have glibly taken over the idea of market value without clearly noting the limitations under which it was promulgated by the major economic thinkers and writers. As to land values in blighted districts, one may say safely that much that passes now as evidence of economic value is the untrustworthy opinion of ignorant people on the future use of the land.

The saddest part of this situation is that apparently no one knows enough about city growth and urban land use to give a firm foundation for appraisal of values in a blighted district.⁴² In the past, when our cities were growing rapidly and

⁴² There are, however, degrees of ignorance on these matters. One of the first steps in assembling land, which has not been discussed here because it seems obvious, is to secure an appraisal of the fair cash value of the properties. The appraiser or the members of the appraisal committee should be well acquainted with the areas in question, should not have a financial interest that might warp their judgment, and should be able to testify effectively, if necessary, in condemnation proceedings. Clearly, selecting them is not an easy job. One of the advantages of a special appraisal committee is that its members may be chosen with

business and industry were expanding, land values based on high hopes of future intensive use were often justified. Today, however, the high values often remain after these former conditions have changed markedly. Another confusing influence might be called "technological unemployment of land." Skyscrapers and other modern commercial and residential structures make possible high land values for the sites on which they are located. The higher the value from such a use, the greater the area over which it exercises an influence. Quite as clearly, however, the more intensive the use, *i.e.*, the more people and the more business that can be piled upon one parcel of land, the fewer the lots that will be needed as sites for commercial, industrial, and high-rental housing uses.

The failure to realize this general fact and the universal failure to measure land use with any accuracy have created the fundamental problems of land values and, therefore, of land assembly in blighted districts. The solution is not a matter of a few weeks or months, but of an intelligently directed program of study and research over a period of years. The housing program cannot be held back until this research work is done, of course, but when it is done the difficulties of land assembly will be much less formidable.

SUMMARY

Past experience has shown the inadequacy of trying to better urban housing conditions by passing purely restrictive legislation. City planners, architects and builders with the aid of the PWA could today create healthful, convenient and attractive neighborhoods for people of low income if it were possible to assemble suitable areas of land.

The tools that are needed for a land assembly program are the recognition of low-cost housing as a public purpose for which eminent domain may be exercised and, in most states, a revised procedure for condemnation. Even when these are secured, careful attention must be given to the mechanics of assembling the land needed. The first steps are most important. The land owner whose properties are heavily mortgaged presents a difficult problem. Housing agencies should consider carefully mediating between him and his creditors both in the interest of rapid assembly and of ordinary fair dealing.

Finally, while going ahead on the immediate problems of getting housing developments under way, the members of various public bodies for housing should not overlook the confusion and ignorance that marks nearly all attempts to estimate or assess land value in these districts. It is too late now to wait for a factual basis on which a rational appraisal of values can be made but that basis should be supplied as rapidly as possible.

the different requirements in mind; *i.e.* some members might be chosen primarily because of their familiarity with the areas, one for his ability to testify convincingly, one primarily because of his prestige among other real estate men and his reputation as a level-headed and broad-minded citizen. The committee should be kept as small as seems consistent with a fair balance of abilities and personal qualifications.

In some cities established or special committees of the real estate boards may be used. In cities in which the boards have little prestige or have been rabidly opposed to low-cost housing developments they should be used only after a careful consideration of other possible arrangements.

A NOTE ON THE POWER OF THE FEDERAL GOVERNMENT TO CONDEMN FOR HOUSING

ROBERT G. SEAKS*

The national government's extensive program of slum clearance and home construction to raise housing standards and provide employment must look for constitutional sanction to the so-called "spending power" of Congress. Although the current period of stress bids fair to enlarge pre-depression concepts of national power, it seems impossible to sustain the suggested program on any other basis. While federal authority to regulate interstate commerce has been given an ever-widening scope, it is difficult to conceive of a re-housing project as a regulation of interstate commerce. That the spur to industrial activity offered by large federal expenditures would increase the flow of interstate commerce may be economically true, but the subtleties of constitutional theory would hardly countenance so long a leap. The Supreme Court's recent refusal to regard economic emergency as a source of power¹ precludes those who would urge it to justify extending federal authority. The relation of slum clearance to other spheres of national power seems unduly remote.

The first of the enumerated powers of Congress reads:² "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and *provide for the common defense and general welfare of the United States.*" Throughout early constitutional history two opposing views of the correct limitations on the power to spend persisted. The Madisonian view (so-called from its most vigorous proponent) considered that the legitimate field of expenditure was but coextensive with the granted fields of power. The Hamiltonian view interpreted the provision to permit expenditure of funds with the sole limitation that it be in promotion of the general, as distinguished from local, welfare.³ While the question was early the subject of recurrent Congressional debate, legislative practice since the Civil War has tacitly adopted and broadened the Hamiltonian view, and funds have been appropriated for such diverse purposes as the relief of localities stricken by floods⁴ and of

* A.B., 1931, Gettysburg College. Now a member of the third year class in the Duke University School of Law.

¹ Home Building & Loan Ass'n v. Blaisdell, 54 Sup. Ct. 231, 235 (1934).

² U. S. CONST., Art. I, §8, cl. 1.

³ 4 HAMILTON, WORKS (Lodge ed.) 70, 151, cited and discussed, together with the Madisonian view, in WARREN, CONGRESS AS SANTA CLAUS (1932) 6-10.

⁴ WARREN, *op. cit. supra* note 3, 78.

earthquake sufferers in Japan,⁵ the creation of a bureau of home economics⁶ and bounties for sugar producers.⁷ Which view is the constitutionally proper one has never been determined by the Supreme Court, and in holding in *Frothingham v. Mellon*⁸ that a taxpayer has not sufficient interest in federal funds to attack an expenditure, the Supreme Court has raised an obstacle to its ready determination. Whether continued acquiescence in legislative practice be erected into constitutional precedent or whether the practice be extra-constitutional and permissible only through lack of a proper preventive, the conclusion seems warranted that the spending power of Congress is beyond the range of judicial attack.⁹

But if the federal government is itself to undertake slum clearance and housing construction, more than the power to spend money for such purposes is needed. A prerequisite to comprehensive slum clearance is a free exercise of eminent domain powers,¹⁰ and whether condemnation for housing and slum clearance is constitutionally permissible to the national government is as yet unanswered. A consideration of cases sustaining the existence of federal eminent domain suggests two different limits on its scope—limits which parallel those historically urged with reference to the spending power. The first view would permit the exercise of eminent domain with the sole requirement that the land condemned be put to "public use,"¹¹ while the second view would limit its exercise to effectuation of the granted powers (without determining whether these include the spending power). Since all cases wherein the Supreme Court has sustained federal condemnation can be brought within narrower limits of delegated powers other than the spending power,¹² neither the first theory nor the broader interpretation of the second theory can be taken as settled.

That the United States had any power of eminent domain over lands under state jurisdiction was never determined until 1875. The dominant states' rights philosophy made Congress wary of asserting the existence of powers not specifically conferred by the Constitution.¹³ A possible, more concrete deterrent was the ambiguous wording of the constitutional authorization to Congress "to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."¹⁴ Prior state decisions had intimated that the stipulation for the

⁵ *Ibid.*, 110.

⁶ 46 STAT. 1271 (1931).

⁷ 26 STAT. 583 (1890). The constitutional question was dodged in *United States v. Realty Co.*, 163 U. S. 427, 16 Sup. Ct. 1120 (1896).

⁸ 262 U. S. 447, 43 Sup. Ct. 597 (1923). The taxpayer's case to enjoin enforcement of the Maternity Act was decided in conjunction with a similar proceeding instituted by Massachusetts, and the decision is usually cited as *Massachusetts v. Mellon*.

⁹ The principal writings on the question are WARREN, *op. cit. supra* note 3, and CORWIN, *The Spending Power of Congress—Apropos the Maternity Act* (1923) 36 HARV. L. REV. 548.

¹⁰ See Woodbury, *supra*, p. 225.

¹¹ In this note, low-cost housing and slum clearance will be assumed to be public uses. The question is discussed in Woodbury, *supra*, p. 219 *et seq.*

¹² But *cf.* *Brown v. United States*, 263 U. S. 78, 44 Sup. Ct. 92 (1923), discussed *infra*, p. 235.

¹³ See NICHOLS, *EMINENT DOMAIN* (2nd ed. 1917) 106.

¹⁴ Art. I, §8, cl. 17.

consent of the state legislatures was a prerequisite, not only to jurisdictional supremacy, but also to acquisition of mere proprietary ownership.¹⁵ Lands needed in furtherance of federal functions were secured through state statutes authorizing the condemnation of lands by the state and their subsequent transfer to federal control.¹⁶ And this method is still utilized to secure lands for the national government when its own ability is debatable.¹⁷ Should federal condemnation be invalid, states so inclined could make possible federal slum clearance within their jurisdiction by this indirect route.

These early doubts of the existence of federal eminent domain powers were ended by *Kohl v. United States*¹⁸ where authority on the part of the national government to condemn in a federal court sites for a post office and court house was broadly sustained as "essential to its independent existence and perpetuity. . . . The right is the offspring of political necessity; and it is inseparable from sovereignty unless denied to it by its fundamental law." But the Court hastened to explain that the national government is sovereign only within the sphere of its enumerated powers and specified the postal and judiciary powers as justification for condemnation. That the rationale of the *Kohl* case confined the power of eminent domain to furtherance of the granted powers is reinforced by the next four opinions—all by Justice Field.¹⁹ Thus in *United States v. Fox*²⁰ it was said *obiter*: "the United States . . . may acquire and hold real property in the state, whenever such property is needed for the use of the government in the execution of any of its powers." No departure from this view is discernible in *Boom Co. v. Patterson*²¹ despite a reversion to loose language in the dictum that "the right of eminent domain . . . appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty." This language was affirmed and restated in *United States v. Jones*,²² but that Justice Field had no intention of widening the theory of the *Kohl* case is apparent from the last of these decisions²³ where the phrasing is that the United States has "the right to take private property for public uses when needed to execute the powers conferred by the Constitution."

Despite this apparent delimitation of the scope of eminent domain, the question was regarded as open in *Shoemaker v. United States*²⁴ where land within the District

¹⁵ See, e.g., *Gilmer v. Lime Point*, 18 Cal. 229, 259 (1861).

¹⁶ This procedure was frequently attacked on the ground that use of the eminent domain power could be justified only to promote the condemning sovereign's policy and not to effectuate the purposes of another sovereignty. While the view had some judicial support, *People v. Humphrey*, 23 Mich. 471 (1871), *Darlington v. United States*, 82 Pa. 382 (1876), the weight of authority in the states approved this method of federal acquisition of needed land. NICHOLS, *op. cit. supra* note 13, at 107.

¹⁷ See, e.g., *Yarborough v. North Carolina Park Commission*, 196 N. C. 284, 145 S. E. 563 (1928); *State v. Oliver*, 162 Tenn. 100, 35 S. W. (2d) 396 (1931).

¹⁸ 91 U. S. 367 (1875).

¹⁹ Dissenting in the *Kohl* case on another ground, Field, J., assumed that the majority opinion confined the exercise of eminent domain to effectuation of the enumerated powers.

²⁰ 94 U. S. 315 (1876).

²¹ 98 U. S. 403 (1878).

²² 109 U. S. 513, 3 Sup. Ct. 346 (1883).

²³ *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525, 5 Sup. Ct. 995 (1885).

²⁴ 147 U. S. 282, 13 Sup. Ct. 361 (1893).

of Columbia was held properly subject to condemnation for a park. The landowner urged a distinction between federal and state powers to condemn in that the former "must be limited in its exercise to such objects as fall within the expressed enumerated powers conferred by the Constitution." The Court properly replied that it was not called upon to consider whether the "alleged restriction" existed inasmuch as Congress is given exclusive power over the seat of government. Returning to orthodoxy, *Chappell v. United States*²⁵ sustained compulsory acquisition of a lighthouse site, recognizing the existence of the power to condemn "whenever in the execution of the powers granted to the United States by the Constitution, lands are needed." In a case²⁶ decided at the same term permitting exercise of eminent domain for creation of a national park commemorative of a battlefield, it was said: "The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of these powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred." By thus blurring the issue and failing to state from what powers the inference was drawn, the case becomes dubious authority for any position. While it has been thought by a high authority to approve the exercise of eminent domain in conjunction with the spending power,²⁷ it is equally arguable that the case recognizes the need for referring the exercise of eminent domain to at least other granted power. Particular stress on the tendency of the park to foster patriotism makes it apparent that its most substantial basis was the war power.

Two lower federal court decisions²⁸ have sustained the federal power to condemn in aid of reclamation projects, although the federal government is held to have no general legislative power for this purpose.²⁹ Reliance seems to have been placed upon its power to make all needful rules and regulations respecting its property.³⁰ Yet it is a long step from such power to the power to take other property in aid of the development of that owned by the government. It is perhaps significant, therefore, that a more recent Supreme Court decision³¹ upheld condemnation of private lands for this purpose without any consideration of the limits of federal power.

²⁵ 160 U. S. 499, 16 Sup. Ct. 397 (1896).

²⁶ *United States v. Gettysburg Electric Ry. Co.*, 160 U. S. 668, 16 Sup. Ct. 427 (1896).

²⁷ Corwin, *supra* note 7, at 577.

²⁸ *Burley v. United States*, 179 Fed. 1 (C. C. A. 9th, 1910); *United States v. O'Neill*, 198 Fed. 677 (D. Colo. 1912).

²⁹ *Kansas v. Colorado*, 206 U. S. 46, 27 Sup. Ct. 655 (1907).

³⁰ U. S. CONST. Art. IV., §3, cl. 2. In the first of the two cases, the court relied upon this clause to sustain the Reclamation Act as a whole and to distinguish *Kansas v. Colorado*, *supra* note 29 *Burley v. United States*, *supra* note 28. In its discussion of the eminent domain problem, it seemed concerned only whether this taking was for a public use. The second case, *United States v. O'Neill*, *supra* note 28, relied on its predecessor. It should be noted that, although proprietors in Western states have been held to have the power to condemn rights of way for irrigation ditches leading to their land, the United States was not proceeding as such an owner under state law but under the federal statute. *United States v. O'Neill*, *supra*.

³¹ *Brown v. United States*, 263 U. S. 78, 44 Sup. Ct. 92 (1923).

While it is unlikely that, in a case involving condemnation for housing, the question of the extent of the federal power would be thus ignored, nevertheless, an uncritical resort to the often-used but undefined term, "attribute of sovereignty," might enable the Court to gloss over doubts springing from the limited character of federal sovereignty, leaving as the only limitation upon federal takings the usual requirement that their purpose be "public." If, however, the Court were to seek a link between the exercise of eminent domain for housing and the powers delegated to the federal government by the Constitution, then it seems inevitable that it must have recourse to the spending power.³²

As noted above, only under the Hamiltonian view³³ does this power to provide by taxation for the "general welfare" extend to an activity such as housing which is unrelated to the other delegated powers. If, however, one may assume the soundness of that view, then it may be argued that the federal government, in raising funds and obtaining land for housing under the authority of that power, is acting in its sovereign capacity and, as such, is entitled to the exercise of eminent domain as the usual attribute of the sovereign in acquiring property. There would be a certain anomaly in the recognition of this attribute in aid of other powers only to deny its exercise in conjunction with that clause which contemplates governmental activity in the spending of money and the acquisition of property, the very functions which the eminent domain power is designed to implement. To authorize governmental spending and at the same time to subject the government to the higgling of the market and the dictates of property owners is to invite extravagance and waste.

Another argument may be advanced. Since the clause authorizing Congress to provide for the "general welfare" stipulates the means whereby this is to be accomplished, *viz.* by the levying of taxes and, impliedly, by the expenditure of their proceeds, it seems clear that the "necessary and proper" clause³⁴ cannot be resorted to in justification of other means of achieving the same end. A contrary conclusion would undermine the basic principle that the federal government is one of delegated powers.³⁵ But no such difficulty impedes the enactment of laws "necessary and proper" only to the means specified, the levying of taxes. A host of such statutes do in fact exist.³⁶ May it not then be that laws "necessary and proper" to the companion

³² The Court might, it is true, pursue the course followed in the *Gettysburg* case, *supra* note 26, and refuse to specify the powers from which the justification for eminent domain is to be "deduced." This might, moreover, be coupled with a suggestive reference to the stimulus which the construction of low-cost housing would afford to interstate commerce in the products of the well-nigh stagnant heavy industries.

³³ "Hamiltonian view," as here used, refers to the interpretation of "general welfare" placed upon it by Congressional practice and disregards Hamilton's own effort to distinguish "general" from "local" welfare. However, even though housing were looked upon as promoting only local welfare, still the housing movement fostered by the federal government has also a broader purpose, the stimulation of employment and commerce nationally.

³⁴ U. S. CONST. Art. I, §8, cl. 18.

³⁵ If the federal government could enact legislation "necessary and proper" to the end of providing for the "general welfare," then it might, for example, not only subsidize maternity clinics but penalize failure to report to them.

³⁶ Statutes rendering criminal acts in evasion of taxes constitute the most obvious example.

means *viz.*, that of applying the proceeds of such taxes to the acquisition of property, are equally justifiable as impliedly within the scope of federal authority? If so, then certainly eminent domain is so intimately related to the process of acquiring property as to be "necessary and proper" thereto.

Two weaknesses inhere in these arguments. In the first place, the specification of means whereby Congress may provide for the general welfare may be construed to exclude, by implication, the use of any coercive means⁸⁷ in aid of spending, a construction which would be wholly consonant with the exercise of eminent domain in aid of the other delegated powers since the means to be employed for their attainment is left to the discretion of Congress.

The second weakness lies in the fact that the articulation of these arguments by the Court would compel it not only to choose between the competing views as to the scope of the spending power but also, whichever view was adopted, to determine thereafter whether the federal government was acting within the bounds it set, and thereby involve the Court in litigation which might, perhaps, embarrass the government in the conduct of essential activities. This consideration weighed heavily in the Court's refusal to entertain the taxpayer's suit to enjoin the enforcement of the federal Maternity Act.⁸⁸ But, if the Hamiltonian view were adopted, there would be ample justification in policy for denying to a taxpayer the power to question the propriety of an expenditure while allowing a landowner to raise the same question in eminent domain proceedings. Not only is his stake in the issue far more substantial, but the likelihood of embarrassment to the government in the conduct of its affairs is far less. Eminent domain proceedings have always been subject to the test of "public use" which seems coextensive with the "general welfare" limitation upon the spending power.

The arguments which have been advanced in support of federal power to condemn for housing are untested in the courts, but they are not in conflict with decided cases. Moreover, it must be remembered that the entry of the federal government into the field of low-cost housing is itself without peace-time precedent. If justification for this action is to be derived from the Constitution, its advocates must not shrink from novel argument.

⁸⁷ Yet certainly the power to spend embraces the power to enforce contracts made in aid thereof and to restrict the remedies available to persons dealing with the government.

⁸⁸ *Prothingham v. Mellon*, *supra* note 8. The Court there remarked: "If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect of the statute here under review but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached." 262 U. S. at 487, 43 Sup. Ct. at 601.

CONTROL OF HOUSING ADMINISTRATION

WALTER H. BLUCHER*

In any discussion of the housing problem it is necessary that we first determine just what we are going to discuss and that we define some of the terms to be used. Since the housing problem under consideration at the present time involves "low-cost housing" or housing for "low-wage earners," it is essential that we determine what we mean by these terms. It has been customary to divide the American public into three income groups, that which has an income not exceeding \$1,200 per year, the group having an income between \$1,200 and \$2,000, and the other having an income in excess of \$2,000.¹ It is the writer's opinion that the income group making up the lowest third (income not to exceed \$1,200) should again be divided into three groups. At the very bottom of the lowest third is the group which has insufficient income to permit the payment of any rent. This is the "welfare group" or the "public aid group"—a group which in recent years has greatly increased. A certain class of people in America, however, will always require some form of public aid. Obviously, the housing which we are designing today is not housing for that "lowest third of the lowest third."

The middle third of the lowest third makes up that part of the population which at the present time is paying a rental of three or four dollars per room per month. This is, admittedly, a rough figure, but a survey of many of our larger cities will find a considerable part of the population residing in the blighted or slum areas in this class.

The upper third of the lowest third is that group which at the present time is paying five to seven dollars per room per month. On the lower east side of New York the average is approximately five dollars and fifty cents. It is generally admitted that this is a limited group and is probably the upper class of our so-called "low-income group." About the only form of housing possible according to present plans, even with the Government subsidy, is that which will provide for this last-named group. Without further subsidies the two lower groups can not be reached.

There is, in addition, another group, intermediate between the low-income and medium-income groups, which is expected to pay between seven and twelve dollars

* LL.B., City Planner and Secretary, Detroit City Plan Commission; Director, National Conference on City Planning; President, Michigan Planning Conference; Consultant, National Planning Board.

¹ WOOD, RECENT TRENDS IN AMERICAN HOUSING (1932) 52.

per room per month. These are the tenants who are to be provided with housing facilities by the so-called limited dividend housing corporations. It is generally agreed that many of the people in this group are now paying a lower rental, and how their incomes are to be stretched to meet the new rental requirements has not yet been determined. It is equally obvious that the social status of the people in the various groups heretofore mentioned may be different, that the nature of the administration, the educational facilities, the care of the properties required will differ in the different income groups. It is necessary, therefore, that we determine at the outset just what groups we propose to re-house so that we may consider the administration of those groups only. Nothing could be gained through a discussion of the theoretical administration of housing units which admittedly cannot be built at the present time.

Housing is being undertaken by two groups. Originally most of the projects were started by limited dividend housing corporations which, though private, were subject to some form of public control. Such control was required by the terms of the Emergency Relief and Construction Act of 1932 in authorizing the Reconstruction Finance Corporation to make loans for housing. The present tendency is distinctly toward *public housing*² since limited dividend housing has failed to produce results and since in public housing the federal government will grant up to 30 per cent of the cost of labor and materials.

There is no experience in America which can help guide us in the proposed public housing projects now under consideration. There is, admittedly, a field of housing experience in Europe, but because of the historic differences of the people, because of the difference in land tenure, the difference of the attitudes of European peoples toward government, toward public officials, and with respect to the responsibilities of the tenants, it can hardly be said that the European experience will necessarily show us in America how to proceed.³ We have had some experience with limited dividend housing corporations, notably in New York, but in every case the people housed are of a higher economic level than those groups which we propose to re-house at the present time. Since the economic status to some extent determines the social status, it would hardly be fair to say that the people in the proposed new housing developments will be of the same class or kind, that they will recognize the same obligations, or can be handled in the same manner. The writer is definitely of the opinion that the class of people to be re-housed in the new housing

² We must determine what we mean by public housing. I understand it to mean housing undertaken by a public body such as a municipality or a state, which may or may not be constructed by that public body but which, we may assume, at least will be administered by such a public body. It is, of course, necessary to include among such public bodies the federal Public Works Emergency Housing Corporation (PWEHC) although its exact relationship to the various local or state public bodies with which it will deal has not yet been determined.

³ The newspapers of February 13, 1934, carried the story that Karl Marx Hof in Vienna had been shelled and razed. If the administration does not happen to be of the same political faith as the tenants in the building the thing to do is to destroy the building. All problems of administration are thereby solved. Simple— isn't it?

developments, if we stand by our intention of providing low-cost housing, will, generally speaking, be a different group than that to be found in the limited dividend housing projects.

Public housing projects in America will necessarily be administered by public officials. The present tendency is to have housing commissions or authorities which are made up of non-salaried officials. As honorary commissions or authorities, the "stigma" of public service need not necessarily apply. These bodies are, however, made up of public officials, and in the eyes of a great body of American citizens a public official is a politician, and a politician is *per se* dishonest. This is the attitude of many of our "enlightened" citizens. They are unable to understand that there are in the public service many honest men and women who are desirous of contributing their best efforts to the public good. To them, a public official is necessarily one who is not interested in the public good but is interested only in his own personal aggrandizement. Because of this attitude it is difficult to obtain the public confidence which is so important in a project of this kind. There is, of course, some foundation for the general public attitude in view of the conditions prevailing in many of our larger cities. Many prominent citizens who would say, rightly or wrongly, at the very outset, that an honest administration of a public housing project in some of our American cities is impossible. It is here that the European countries have an advantage.⁴ One of the essentials in administering the housing project will be the convincing of the public that the administrative group is interested only in the social well-being of the tenants. It is important, therefore, that every housing authority set up to administer a housing project be made up of outstanding public citizens who have the confidence of the community. The housing group should, of course, be composed of people who understand the social aspects of the problem.⁵

The editor has raised this question. "Can adequate assurance be given that a board (non-salaried) so constituted would persist in careful supervision of housing projects after the first wave of creative enthusiasm has given way to the more prosaic work of the administration?" It can safely be said that if the board is made up of the proper personnel, that is of members who at the outset take an interest in the work, that interest will continue. There has been adequate experience throughout the country to warrant this statement. The work of the State Housing Board of New York is proof of the assertion. There are at the present time in the United States hundreds of non-salaried boards. Most of the planning commissions in the United States are in that class. So, too, are most of the boards of appeals on zoning. In many instances interest in the work has continued over a period of years, provided there was some work to do. There are, of course, many city planning boards throughout the country which show no such interest, but in almost every instance that interest was not present upon the creation of the board. They were never told

⁴ Perhaps the last sentence should be deleted in view of what has recently occurred in Europe.

⁵ The question whether there should be a statutory distribution of the personnel among various occupations is discussed *infra*, p. 247.

what work they might do or how they might proceed to do it. No program was ever laid out. There are enough successful examples, however, to warrant the broad statement made that continuous interest can be obtained.

The method of appointment of the board raises some interesting questions. Since the Maryland Authority is a state board, it follows that the board was appointed by the Governor.⁶ The same is true of the New Jersey Authority.⁷ In Ohio an elaborate method of appointment has been set up.⁸ One of the appointments is made by the Probate Court, one by the Common Pleas Court, one by the Board of County Commissioners, and two by the mayor of the most populous city in the territory included in the district. In Michigan, although *City Housing Commissions* are created, the legislature at the very last minute placed the appointing authority in the hands of the Governor.⁹ If this were the accepted method, a rather anomalous situation might be created. The city board is appointed to do a job in the municipality. Funds for its organization are supposed to be provided in the first instance by the municipality. Interest in the project is purely local. There seems to be little reason, therefore, why the appointment should rest in the hands of the Governor.¹⁰ It seems consistent to say that for purely local authorities the appointment of the board should rest within the hands of the Mayor. Some criticism will result from those who say that there is apt to be less local politics if the board is appointed by the Governor. There is very little difference, however, between local and state politics.

About the best we can do at the present time is to put a series of questions regarding administration, which can be answered only by experience.

Do we want municipal control or is some further control essential? Is it necessary that we have a state group to supervise the local projects in addition to the local authority, or should there be a citizens group to check the official group? The problem is further complicated by the undetermined status of the Federal Public Works Emergency Housing Corporation (PWEHC). It is assumed that this corporation will, at the outset, undertake the development of some of the projects and that these will later be turned over to local authorities. How far the PWEHC will want to go in maintaining control of the development is not known, but it is reasonable to expect, since federal funds are involved, that the federal government will wish to maintain direct control over the project during its "paying-off" lifetime and that it will want to be assured of proper control after the amortization period has passed. It seems to the writer that such control is desirable. The attitude of the local authority might be that, since no local funds are involved, it would be desirable to decrease rents below an amount sufficient to cover all amortization, maintenance, and interest

⁶ Md. Laws 1933, c. 32.

⁸ Ohio Laws 1933, 1st Spec. Sess., H. B. 19.

⁷ N. J. Laws 1933, c. 444.

⁹ Mich. Pub. Acts 1933, 2nd. Extra Sess., No. 11.

¹⁰ The Governor of the State of Michigan was quoted as saying "I have borne in mind the fact that the slum clearance problem is a city and not a state problem. I can see no reason why the legislature should have put the duty of naming the commission on me instead of the Mayor."

costs. Even an "honest"¹¹ group might reach this conclusion. On the other hand, the pressure for special privileges within the housing area probably will be great, and even an "honest" authority may give way to it. Again, the authority may not think it dishonest to grant favors to the local officials by placing particular tenants in the houses. Since the federal government has an investment in the property, it is reasonable that it should have adequate control to see that that investment is properly safeguarded.

This does not necessarily mean that Washington should control every detail of the operation of the development. Certainly it should not control the purchase of necessary janitorial supplies or the hiring of janitors to suggest an extreme division. The point at which federal control stops and local control starts may be a difficult point to determine. As is stated later, the nature of the development will be a controlling factor. If the PWEHC retains the architects, constructs the buildings, and later turns the project over to a local board, some of the problems of control will have been eliminated. Authority for the appointment of the staff of the local authority should rest in its hands, but the federal government should have the right to direct the removal of any of the key men if they are found to be unqualified or inefficient and as a result endanger the project. The Michigan bill, when first presented, contained a provision that, with the exception of the director and secretary, all other employees should be subject to civil service. That provision was removed before final passage.¹²

A great many complications can arise from conflicts of authority. Let us assume that the local housing authority is appointed and that, in addition, the PWEHC will undertake the work—already we have established a point of conflicting authority. Add to this some of the provisions of the Michigan act and we find further complications because that act provides, among other things, as follows: "All deeds, contracts, leases, or purchases entered into by the commission shall be in the name of the city or village and shall be approved by the governing body of said city or village."¹³ If the housing authority is not to be autonomous but is to be subject to the control of the local legislative body, in addition to a possible control by the state housing board and by the federal authorities, some difficulty may be experienced in getting any work done.

If the local group is at all satisfactory it must be given wide powers. If it is not satisfactory, presumably the project will not be turned over to it by the PWEHC. Assuming that the local group is satisfactory, the PWEHC must treat it as honest

¹¹ Here a definition of the term "honest" is required—a proper definition of the term will list as "dishonest" any group which grants any kind of special privilege.

¹² It is the writer's opinion that there should be no civil service control over the appointment of architects, engineers, lawyers, and planning consultants, nor should there be a requirement that any of these submit bids for the work. Technical and professional men of this character should be chosen because of their ability and experience rather than because of the low estimate that they put on the value of their services. There is no more sense in taking bids on the services of an architect, an engineer, or a lawyer, than there is in taking bids for the services of a doctor.

¹³ *Supra* note 9, §11.

and trustworthy. There is another reason why the local group must be given wide authority. If its members are to take an interest in the project, they must feel that they have some control over it. They are certain to lose interest the moment they find they are merely serving as minor administrative officials for the federal government.

We have heretofore discussed the relationship between the PWEHC and the local authority. We may not necessarily assume that such relationship will exist in every case. There is a possibility that federal control will be exercised by the Public Works Administration as such and not through the PWEHC. The nature of that control should therefore be considered.

The writer has had an opportunity to examine the contract and schedules between the Juniata Park Housing Corporation and the United States (124 printed pages). In this contract there is to be found the control which a reasonable and careful lender of money would insist upon to safeguard his investment. In addition, however, certain special measures of control are to be found. For instance, the Government reserves the right to refuse to make an advance of funds "If in the judgment of the Government the financial condition or business prospects of the Borrower shall have unfavorably changed, to a material degree, from its condition or prospects as at any time theretofore represented to the Government; . . ."

In Section 24 of the contract it is agreed "that the Government shall have the right and power to regulate and control the management, operation, maintenance, and rentals of the Project. . . ." The scope of such right is defined in Part Four of the mortgage, but it is further outlined in a supplemental Supervision and Option Agreement.¹⁴

¹⁴The Supplemental Supervision and Option Agreement mentioned above cites the previous contract with the Government and goes into considerable detail with respect to Government regulation. Among other things, the following is required: "The Government shall have the right and power at all times to regulate, supervise and control the management, operation, maintenance and rentals of the Project in addition to, but not in derogation of, the power of any such public authority or body so to regulate, supervise and control as provided in Section 1 hereof. The Government may, without limitation of the right and power herein granted to it:

- (a) Order any such repairs as it may deem necessary or reasonably advisable to preserve the health and safety of the occupants of the building and structures embraced in the Project.
- (b) Order the Corporation to do such acts as may be necessary to comply with the provisions of applicable laws or requirements of any public authority. . . .
- (c) At all reasonable times, examine the Corporation, all books and accounts kept by it, . . .
- (e) Prescribe uniform methods and forms of keeping accounts, . . .
- (f) Require the Corporation to file with the Government an annual report. . . .
- (g) Regulate or restrict the salaries, commissions, or other fees paid to officers, employees, or agents of the Corporation, and regulate or restrict all contracts for the management of the Project or any part thereof which the Corporation may at any time enter into; and, to insure proper and efficient operation of the Project, require that persons of sufficient number and ability be employed by the Corporation, and at any time require the Corporation to discharge any persons employed on the Project.
- (h) Limit, restrict, and regulate the lease or sale of the Project or any part thereof (including the rental and terms of sale price, and all other points involved), for stores, garages or any other business purposes, or for any other purpose other than as shown in the plans of the Project approved by the Government.

Provision is later made for the acceleration of the debt "If the Mortgagor shall fail to comply with the orders, regulations, or requirements of the Government relating to the regulation and control of the management and operation of the mortgaged property. . . ."

We may assume that similar control will be exercised in other projects of a like nature.

State Housing Boards

In fifteen states¹⁵ there are boards which supervise private limited dividend housing corporations. The relationship between these boards and the limited dividend housing corporation has been fairly well established through the New York practice. A reference to the New York law¹⁶ will show that the State Housing Board has rather wide control over their activities. There need be no misunderstanding as to the administration of projects of this kind.¹⁷

The control heretofore exercised by state housing boards over the activities of limited dividend housing corporations has been very broad. This is particularly true of New York where we have had the longest and best experience relating to them. The theory of this control probably rests on the basis that the corporation is given certain powers and privileges beyond those delegated to other private corporations and that in exchange for these advantages it subjects itself to this control. The two principal advantages are tax exemption and the power of eminent domain. In New York tax exemption has been granted, and, although the right of eminent domain exists, it is believed that it has never been exercised by a limited dividend housing corporation.

In some of the more recent acts, tax exemption has been eliminated so that the only advantage to these corporations is the theoretical power of eminent domain. Whether this is sufficient compensation for the strict control exercised by the state housing board is very questionable. The lack of results in limited dividend housing

- (i) Fix, and from time to time revise, the maximum rentals or the maximum average rentals per room, . . ."

The Supplemental Agreement also provides that the Corporation shall use a standard form of apartment lease which shall be satisfactory in form and substance to the Government.

A most important provision in the Supplemental Agreement is the option by which the Government is empowered to purchase the Project. The corporation agrees not to sell the Project without first offering the same to the Government. Moreover, the option may be exercised upon default in any of the terms of the option agreement.

¹⁵ Arkansas, California, Delaware, Florida, Illinois, Kansas, Kentucky, Massachusetts, New Jersey, New York, North Carolina, Ohio, South Carolina, Texas, Virginia.

¹⁶ N. Y. Laws 1926, c. 823, N. Y. Cons. Laws (Cahill, 1930) p. 2781.

¹⁷ One of the persons who has had extensive contact with the State Housing Board of New York was asked his opinion with regard to the outstanding features of the New York experience. It was his opinion that one of the most important provisions of the law was that which provides for the acceptance of a designee of the Board of Housing as a member of the Board of Directors of the Limited Dividend Housing Corporation. This same person felt that provision in the law, giving the Board the power to prescribe accounting methods, was the second most useful device. It is suggested that reference be made to the comprehensive studies of housing conditions prepared by the State Housing Board as well as the Annual Reports of that Board.

may be partly attributed to the fact that, particularly under the more recent housing laws, private capital does not feel that enough is to be gained through limited dividend housing to warrant subjection to such extensive control. In view of the limited dividend and the very apparent risks to capital, many operators feel that the advantage of eminent domain is not balanced by the disadvantages of control over plans, building, operation, accounting, etc.

The relationship of such state boards, however, to local municipal housing authorities is more involved. In some instances there may be slight control by the state board over the activities of the local board. In some cases this control amounts to almost no control at all.

The recently enacted Municipal Authority Act of the State of New York contains the following paragraphs:¹⁸

"67. Powers and duties of board. The board [the State Housing Board] shall collect and distribute information relating to the administration of housing authorities and to the construction, maintenance and operation of projects. The board shall suggest and assist in the preparation of legislation relating to housing authorities and their functions. The board may, in its discretion, prescribe methods and forms for keeping accounts, records and books to be used by an authority. The board may require an authority to file periodical reports not oftener than quarterly covering its operations and activities in a form prescribed by the board and may, from time to time, require specific answers to questions upon which the board may desire information. For the purpose of gathering information to enable the formulation of suggestions for legislation, the board may require an authority to submit additional information relating to the condition and affairs of an authority, its dealings, transactions or relationships.

"68. Projects. An authority shall file with the board a copy of each proposed project embodying the plans, layout, estimated costs and proposed method of financing. The board shall with reasonable promptness transmit to the authority its criticisms and suggestions. Any change made in the project shall be filed with the board by the authority. At any time, upon request of the authority, the board shall submit to the authority its criticisms and suggestions with reference to any change in the project."

It will be noted that the authority of the State Housing Board in New York is very limited. As a matter of fact, beyond the power to supervise accounts and obtain reports and information, there is hardly any authority other than that of suggestion and criticism. If the local project is not satisfactory to the State Board, there is apparently nothing that the Board can do about it.

Most of the state housing boards were created in order that they might meet the requirements of the Emergency Relief and Construction Act of 1932 and with the definite purpose of providing the necessary supervision and regulation for private limited dividend corporations. At the time of their creation there was little thought of municipal or public housing, and as a result the acts provide for very limited state control over municipal housing. In view of the present tendency toward public

¹⁸ N. Y. Laws 1934, c. 4.

housing, it is doubtful if much limited dividend housing will be undertaken.^{18a} In that case, the present state housing boards will have little to do and as a result may, for all practical purposes, cease to function in most states. It appears, therefore, that if there is to be any state control over public housing it must be provided in the acts creating public housing bodies. The Ohio law¹⁹ affords an example.

Under the terms of that law the State Board of Housing has the following authority: (1) It has the power to determine the need for a local authority.²⁰ (2) It determines and fixes the limits of the district to be included within the territory covered by the local authority.²¹ (3) It has the power to enlarge such territory.²² (4) The local housing authority has the right to eminent domain only with the approval of the State Board.²³ (5) A report on "all accounting and other transactions" is to be transmitted to the State Board.²⁴ (It would be very difficult at the present moment to determine what is meant by "other transactions.") (6) The local authority must present an annual report to the State Board.²⁵ (7) The State Board has the power to determine whether the local authority may dissolve.²⁶

Nothing is said to the effect that if plans are not satisfactory to the State Board they may be disapproved. The Board has considerable original authority since it may refuse to grant permission for the creation of the local authority and may also refuse to grant the power of eminent domain. These are rather effective powers. Having created the authority, however, and having granted the power of eminent domain, it will have very little control up to the time of dissolution.

The New Jersey law²⁷ creates a state housing authority only. There can be no conflict unless local authorities are later created.

Relation to Local Bodies

An important question arises with respect to the relationship of a local housing authority to other city departments. In some cases the original plans have been de-

^{18a} But cf. p. 249, *infra*.

¹⁹ Ohio Laws, 1933, 1st Spec. Sess., H. B. 19.

²⁰ "Section 2. . . . Whenever the state board of housing shall have determined that there is need for a housing authority in any portion of a county which comprises two or more political subdivisions but less than all the territory within the county, a metropolitan housing authority shall be created and the territorial limits thereof defined by said state board of housing. . . . After such District has been formed the state board of housing shall have power to enlarge the territory, within such District so as to include other political subdivisions. . . ."

²¹ *Ibid.*

²² *Ibid.*

²³ "Section 7. The housing authority shall have the power to eminent domain which shall be exercised only with the approval of the state board of housing. . . ."

²⁴ "Section 8. . . . and all accounting and other transactions of the authority shall be subject to the inspection and approval of the bureau of inspection and supervision of public offices of the state of Ohio, which shall transmit its report to the state board of housing."

²⁵ "Section 10. Said authority shall keep an accurate account of all its activities and of all receipts and expenditures and make an annual report thereof to the state board of housing. . . ."

²⁶ "Section 12. Whenever the housing authority desires to discontinue its operations it shall make application to the state board of housing, for authority to dissolve. If such application be granted, the state board of housing shall take possession and dispose of all property belonging to the housing authority. . . ."

²⁷ N. J. Laws 1933, c. 444.

veloped by the local city plan commission. That commission presumably has made a study of the entire city and is in the best position to determine in what areas new housing facilities are required. Shall the city plan commission or the housing authority have the final word as to what areas should be developed? Shall the housing authority be a designing authority, or shall the city plan commission have a veto power with respect to the general layout of the development?

The relationship of the local authority to the local legislative body is also important. In many cases streets and alleys will have to be vacated. Final authority for such vacations rests in the local legislative body, and the housing project can be effectively blocked if the necessary cooperation is not given by the legislative body in the way of street re-planning. Here again the city plan commission enters into the picture.

Assuming that the housing authority is to call upon other municipal departments for aid, how are the costs of those services to be determined? Shall the housing authority be charged for engineering services, or are those charges to be considered a part of the general cost of maintaining the community? How far is the municipality expected to go in providing municipal services without charge? What about relocation of sewers, water mains, lighting poles, hydrants? What about park and playground maintenance? The Michigan Act²⁸ provides that the housing commission shall have the power—

“(c) To control and supervise all parks and playgrounds forming a part of such housing development but may contract with existing departments of the city or village for operation or maintenance of either or both.”

“(f) To call upon other departments for assistance in the performance of its duties, but said departments shall be reimbursed for any added expense incurred therefor.”

It begins to be apparent that unless there is a high degree of cooperation between the housing authority and other municipal departments, there will be many “obstructions in the road” leading toward perfect administration.

Personnel of Board

Shall the housing authority, when set up, represent various professions? Shall the law provide that one must be a social worker, another a sociologist, another an architect, a lawyer, a business man, a realtor, a builder, an engineer? In none of the acts cited in this article is provision made for classification by occupation. This is rather surprising in view of the strong sentiment (not necessarily based upon experience) to be found in many parts of the country for such a classification. The writer is of the opinion that classifications of this kind are not essential, that the particular profession is not important because there are poor men to be found in every profession. It is most essential that the commission be made up of high-minded, socially-minded, and honest persons. A social worker would be desirable—

²⁸ *Supra* note 9, Sec. 7 (c).

so would a sociologist—so would all of the others, but occupation alone will not insure intelligent and sympathetic administration.²⁹

The powers and duties of the administrative authority are important in this connection. If the commission is to acquire the land, supervise the preparation of plans, contract for and supervise construction, one type of commission might be needed. On the other hand, if the commission is to take over a completed project and merely administer it, still another type of commission might do a better job. If the commission is to be merely an operating commission, many of the questions raised with respect to conflict with other city departments may never arise.

It is difficult to discuss control of administration without going into the realm of actual administration of the unit. Many problems, of course, will arise there. In the case of a negro development, shall there be negro representation on the authority? Shall the director of the project be a negro? Shall the rent collectors, police, school teachers, etc., etc., be negroes? All of these problems enter into the proper administration and are therefore relevant to its control.

One other point should be considered. Little attention has been given to the status of housing or of housing boards after the federal funds have been exhausted. What organizations may be created when housing as a federal function ends?

One thing is certain: the property owners in the affected areas will be forced to merge their interests in some way if any housing is to be done. It is elementary that re-housing on individual sites can not be done and that we must have large-scale or community projects. It is also obvious that in the financing of rehabilitation projects we can not anticipate the purchase of the land or large loans to cover the land cost. Property owners in blighted areas must assume part of the burden.

In the city of Detroit this was the first method attempted for re-housing. A corporation known as the Rehabilitation Association was organized for the purpose of merging the interests of the property owners in re-planned areas. It was proposed

²⁹ The Housing Authority of the City of Toledo, according to the *Architectural Forum*, consists of Charles F. Weiler, dry goods man; Leonard C. Price, secretary of the Toledo Real Estate Board; the Rev. Calvin K. Stalnaker; Miss Amy Maher, social worker; and C. J. Bushnell, University Professor.

The Detroit Housing Commission consists of a physician, the president of a civic study club, a real estate man, a radio announcer, and a business man.

The Cleveland authority consists of the president of the Jewish Social Service Bureau, the president of the Catholic Charities Corporation, the president of the Cleveland Welfare Federation, the editor of the *Cleveland Citizen* (which is the official organ of the Cleveland Federation of Labor), and a retired contractor.

The Cincinnati authority consists of a former president of the Better Housing League, chairman; the other members are a lawyer (former county prosecutor and member of the Board of County Commissioners for several years), the director of the work of the Foreign Policy Association, a real estate man, and a former executive of Proctor & Gamble Company.

The New Jersey State Board consists of Dr. Edith Elmer Wood (see p. 137, *supra*), the comptroller of the Port of New York, a vice-president of the Western Electric Company, and one of the civic leaders in women's organizations.

(Information as to the Cleveland, Cincinnati, and New Jersey bodies was obtained from the National Association of Housing Officials).

that the owners exchange the titles to their properties for corporate stock. It would have been possible for the corporation to borrow the necessary funds for the buildings, and it was anticipated that a limited dividend would be paid on the corporate stock. This plan was proceeding in a fairly successful manner when public housing came to the fore in Detroit with the result that this form of project was dropped. An outstanding difficulty of course in the creation of such organizations is the acquisition of all of the property. A means must be provided for the acquisition of property which is "held out." Under the provisions of limited dividend housing laws the power of eminent domain might be delegated to such a coöperative organization after it has obtained 75 per cent of the property. In all probability payment in cash would have to be made for this property, which of course raises another question. In the Detroit project it was proposed that the value of the land for stock purposes be established at the 1933 assessed value of the land and buildings (which is about 45 per cent of the 1927 assessed value), in which case all of the property owners would merge their interests on an equal basis.

It is believed that the underlying principle for this form of set-up is sound and that in the future housing will have to be done somewhat on this basis. Where property has no value today, a plan providing for a reasonable and limited dividend on the land without any of the worries of taxation, collections, rent delinquency, etc., may induce a number of the owners to merge their property interests to carry it out. Such organizations will, of course, require some public supervision. Perhaps the experience in the control of existing limited dividend corporations will serve as a guide in determining how far it should extend.

In summing up, the first essential, and the most important essential of any administration, is that the authority be made up of honest, sympathetic, and socially-minded citizens. It must be admitted at the very outset that we are travelling upon very thin ice in our proposed housing projects. Although we are attempting to provide housing for the "low-income" group it is possible at the present time to provide new housing facilities for only part of that group. With our lack of experience it will be very easy to destroy any housing project. The causes for such destruction are many. The lack of sympathetic and honest administration can very definitely ruin any project because there will be many influences helping to cause such destruction by those who are not in sympathy with the movement. Any housing project must therefore have more than ordinary attention. These projects are "marginal" in nature. They have a chance to succeed only if all elements work in favor of the project. The second essential is that there be active coöperation between the authority and all other local, state, and federal agencies. There are, of course, other important essentials, but these two stand out. With an honest and sympathetic administration, interested only in the proper control and development of the housing project, there is some chance of success. Without it, it is very easy to forecast failure.

THE HOUSING AUTHORITY AND THE HOUSED

CHARLES S. ASCHER*

Housing under public auspices raises some new problems in the relationship between the housing authority and the housed, which lead to a critical examination of the traditional legal devices for stating their reciprocal rights and duties. Up to the present the owner and occupier, the buyer and seller, the mortgagee and mortgagor, have dealt at arm's length as parties adverse in interest: their relationships have been basically financial. The legal instruments drafted by the attorneys for the dominant financial interests have recited endless covenants by the tenant-buyer-mortgagor, many of which the depression has shown to be of little real value to the interests sought to be protected. Conveyancers, of all lawyers, have been the most direct lineal descendants of the medieval schoolmen: their concepts have been least related to the economic and social problems with which they had to deal.

Now comes the "service state"—an organization developed largely in the last century—and broadens its attempt to use taxation and the police power to make available to the underprivileged those advantages deemed socially essential, which the current economic system does not afford them. To schools, preventive health work, public recreation (an activity of the last twenty-five years) and adult education (even more recent); to water, sewers, light, gas, crime prevention, fire prevention, the state now adds housing as a public facility. What legal devices will best provide a frame-work for this activity?

The first distinction between public housing and most commercial private housing for low-income families is the continuing interest of the state in the housed. We may expect here standards of production for use, not for profit; of design to meet basic needs, not to attract by insubstantial, flashy gew-gaws; and as a corollary a lasting interest in the well-being of the occupants. (This interest is just as "paternalistic" as a pre-natal clinic or supervised playground.) It is not unfair to say that the commercial builder's interest is to get out from under as quickly as possible; it is enlightened self-interest only which dictates whatever concern he shows with the occupier. The dwelling should be substantial enough to last as long as the mortgage.

Continuing interest involves continuing control. This is the first reason why the

* A.B., 1920, LL.B., 1921, Columbia. Member of New York and Illinois Bars. Executive Director, National Association of Housing Officials; Secretary, Public Administration Clearing House, of Chicago. For five years attorney for City Housing Corporation, of New York, the limited-dividend corporation which built Sunnyside Gardens, Long Island, and Radburn, New Jersey.

method of sale and mortgage (or purchase contract, or bond for a deed) is poorly suited to the needs of public low-cost housing. The seller's only controls are those of conditions or restrictive covenants in the deed, or covenants or conditions in the purchase-money mortgage. These are precarious devices. Conditions in a deed, leading to a forfeiture for violation, are so drastic that they are frowned upon in many states. They amount practically to a cloud on title, since it is impossible to establish by the record that they have not been violated. Even where the forfeiture is enforceable, the confiscation of the buyer's economic interest is grossly unfair.

The remedy for a violation of a restrictive covenant is a chancery suit for injunction to prevent the violation or enforce compliance with the terms of the deed. This is not a tool capable of fine adjustment. It is difficult to obtain a preliminary injunction pending the determination of the issue, which may take a year. The burden of money and time in pursuing such an action falls upon the other grantees. And the familiar maxim of equity requires an affirmative showing that an injunction will benefit the complainant more than it harms the defendant. A busy chancery court might be convinced if the defendant had built a wall blocking a neighbor's light; but hardly if the defendant kept his grounds untidily, or if his wife persistently hung the wash in the front lawn.¹ In short, the restrictive covenant is a legal, not an administrative device. It has nothing to do with *low-cost* housing.

Covenants or conditions in the purchase-money mortgage are equally unhandy as a method of control. Legitimately they can relate only to matters affecting the financial security of the mortgagee. Their enforcement is so painful and expensive that even in case of serious default, mortgagees will go to any length to avoid foreclosure. Costs of foreclosure searches, advertising charges, referee's and auctioneer's or sheriff's fees, the uncertainty caused by redemption periods, all eat up the mortgagor's equity without benefitting the mortgagee.

More fundamentally, I do not believe that low-cost housing for sale is economically sound. This, I know, is a discord in the harmony woven around the little gray home in the west, bulwarks against bolshevism, and sound citizenship. I take it that one of the objectives of public low-cost housing is social distribution of the risk. The long-term purchase agreement, by which the prospective buyer puts up a small initial payment and pays the rest like rent, works just the opposite effect. There is no real prospect of profit in a stabilized venture (though the purchaser may be deluded into imagining that some day he can sell his plot for an apartment-site); and the "ownership" which follows his fractional economic interest in the property throws on him the risk of losing all his investment in case of slight misadventure, like any other margin trader. If, as in a time of extensive inflation, there seems to be a profit, I see no justice in letting it all go to the party who invested least.

¹ See Ascher, *The Enforcement of Deed Restrictions* (1932) 8 CITY PLANNING 193; MONCHOW, *THE USE OF DEED RESTRICTIONS IN SUBDIVISION DEVELOPMENT*, Chicago: Institute of Land Economics, 1932. But see *Parsons v. Duryea*, 261 Mass. 314, 158 N. E. 761 (1927).

This is the final break-down in any attempt to control property which has been sold: no satisfactory scheme has been evolved for controlling re-sale. Any forthright provision will generally be held to be invalid as a restraint on alienation.² An agreement not to resell without first offering the property to the grantor is valid, but not useful. It is exhausted by a single offer which is refused; and the offer will often come at time when grantor does not want to repurchase.³

The chief arguments for the sale of low-cost housing are that saving is stimulated. Land economists have a phrase for it: they speak of the "ladder" from tenancy to ownership. Furthermore, the purchaser can use his own labor as a substitute for services which must otherwise be bought and paid for in rent: he can be his own janitor and repair man. The argument based on pride in home-ownership impresses me less since Viennese workers recently defended their rented premises to the death.

A word should be said about coöperative ownership. In some European countries the bulk of low-cost housing has been built by governmental financial aid to great coöperative building societies. It would be going too far afield to explore the reasons why we have not a substantial tradition of coöperative enterprise in this country. Experience to-day warrants the conclusion that low-cost coöperative housing is likely to succeed only if the occupants have some other cohesive bond: being members of a minority race, of a trade-union, or of a nationality (like the Finns or Scandinavians) to whom the scheme is familiar. Other wage-earners seem hopelessly confused by the indicia of their interest—a stock certificate evidencing proprietorship, and a lease evidencing the right to possession; and so long as we have a free labor market and extreme mobility of population, the departing coöperator will find it hard to cash in on his investment when he most needs to.

Finally, the management of real property calls for definite skills and experience which not every wage-earner under our technological tenuity (page Stuart Chase) may be assumed to have; and there are genuine economies to be achieved by mass operations. Utility services and fuel can be supplied at wholesale; the enterprise can afford the overhead expense of competent managers.

This analysis leads me to believe that something nearer the landlord-tenant relationship will best serve public low-cost housing. Control is certainly easier. I have not canvassed the laws of the forty-eight states, but it must be the exceptional jurisdiction where a landlord has not some comparatively summary remedy to regain possession for default in a covenant in a lease. I set aside the drastic rent lien which

² Restrictive covenants against resale to classes of persons—Negroes, Asiatics—are enforceable in some states, not in others. And of course, restrictive covenants, for what they are worth, can be made to "run with the land" and bind subsequent purchasers. The artificialities surrounding this principle would do credit to Duns Scotus.

³ Cf. the option to repurchase in the event of the violation of stipulations concerning use contained in the option agreement. This device, the employment of which by the Public Works Administration is described by Blucher, *supra* at p. . . ., must run the gauntlet of the rule against perpetuities and, where the option-holder is also mortgagee, the rule against clogging the equity of redemption. Its validity is as yet untested.

is still allowed in some states;⁴ it is a barbarous medieval relic and rendered ineffective for low-cost housing in jurisdictions where there is an exemption of a minimum amount of property.

Under continued public ownership, the risk is distributed socially as widely as possible. If the project has been constructed at a time of low cost, rents need never be raised above a sum sufficient to cover operating expenses and the retirement of financial obligations. If the project is built at high cost levels, the rents may have to come down to meet the competition of other rents; but in that case, it will not be the occupier who bears the major burden of loss. The advantages of mass operation will be available. (I shall say something later about promoting good citizenship.)

Yet, though this be the basic pattern, I doubt whether the lease, as it has been used in the past, will be broad enough to encompass all the relationships of housing authority and housed. Perhaps it can be expanded; but what is needed is more of an administrative than conveyancing frame-work.

First of all, few wage-earners sign leases at all. Most low-rent tenancies are month-to-month; and the law has sanctioned these informal relationships by building around them a body of doctrine. Somewhat greater formality must undoubtedly attend a letting by a public body; but I shall be surprised if low-wage-earners are persuaded to sign leases that look like an insurance policy, printed in six-point type. I note that many of the laws authorizing the creation of public housing agencies provide that they may establish by-laws, rules and regulations governing the conduct of their affairs.^{4a} There are interesting administrative possibilities in the use of this device. What significance will the courts give to the regulations of what is in effect a municipal corporation? To what extent will they be binding on occupiers, and by what means will the courts enforce them?

This striving to find sanctions beyond the confines of a lease arises again out of the problems of *parens patrie* as landlord. If the Zilches are unsatisfactory tenants, the private property owner either puts up with them till the lease is out and then refuses to renew—passing the problem of unassimilated Zilches on to other landlords, and what is worse, to other suffering fellow-tenants. Or he tries to establish in court that they are undesirable, and splits his occupants into warring camps: the Kettles, who come to testify that Johnny Zilch breaks milk bottles in the yard, that Cora Zilch pulled their daughter's hair, or that Mr. and Mrs. Zilch had loud words at midnight when he came home drunk; versus the Potts, who join with the Zilches in calling Mr. and Mrs. Kettle and all the little Kettles black. Even if the judge decides in favor of the landlord, and the Zilches move out, the Kettles and Potts will glare

⁴ FOREMAN, *RENT LIENS AND PUBLIC WELFARE* (1932).

^{4a} A law enacted by the Kentucky legislature in the regular session of 1934 (House Bill 585) provides for municipal housing commissions, to be an arm of the city government, like a park board, sewerage commission, or school board. The law authorizes the commission to adopt by-laws, rules and regulations, and empowers the city council by ordinance to provide penalties for their violation.

at each other in the hallways, and loudly instruct their children not to play with those dirty brats, the little Potts and Kettles.⁵

If Johnny Zilch is a problem child, that is no responsibility of the private landlord. If Johnny's problems find overt release, the landlord may turn Johnny over to the juvenile court. But the city's interest is basically different. It cannot divorce so completely its responsibility as landlord and its obligation as re-moulder of delinquent children. Indeed, is not the almost inevitable preliminary to a public housing program the spot map blanketing areas of bad housing with cases of crime, disease, delinquency, desertion, and other municipally expensive social ills?

Consider the case of the tenant who commits the gravest sin of all, failure to pay rent. Even the most sympathetic judge can only shake his head sadly, and explain regretfully that he must decide for the landlord. What is worse, even the sympathetic landlord cannot let the non-paying tenant stay on. He tells the truth when he says that he cannot act as a relief agency: we have seen enough landlords on the relief rolls themselves.

The municipal landlord, on the other hand, can invoke all the machinery of employment services and public assistance before the family is thrown on the street. It would be intolerably artificial rigidly to separate these public functions, and to accept the four corners of a lease as the limits of the reciprocal duties of the parties.⁶

As both public housing abroad and a few private large-scale demonstrations here have shown, low-cost housing projects of the type now proposed are more than the provision of cheap shelter, they presage a new mode of life. Community laundries, organized adult education and recreation, forums, libraries, pre-school child training and care, consumers' coöperatives for the purchase of food and household supplies, are but examples of the new relationships not only between landlord and tenant, but between fellow-tenants which the housing program involves. The child clinic and dental clinic which are already in the picture may even be the forerunner of socialized medicine.

How are these activities to be reflected in the rent structure? What journal entries shall we make on our municipal books? Are the welfare, recreation, education, library, and health departments, out of their budgets, to provide workers and equipment to carry on these activities in public housing projects? Or shall the housing authority, if an independent body, or the municipal housing department, attempt to collect, as rent, some or all of these costs, to reimburse the other divisions of the government? I have to pose these as a series of questions, because there are yet no answers. The solution will vary from place to place and time to time. If there is a library in the housing project (or a clinic, or playground or school) shall it serve

⁵ See Ascher, *Some Reflections on the Art of Administering Deed Restrictions* (1932), 8 JOUR. OF LAND ECON., 373-377.

⁶ I know of one private large-scale landlord, the Bridgeport Homes Company, of which Mr. William Ham has been the manager since the War, which took affirmative steps during the depression to find sources of income for its unemployed tenants, by developing the manufacture of marketable arts and crafts products by them.

only the tenants of the city, or also less fortunate neighbors, still dwelling in slums *irridenti*?⁷ One of the merits claimed for a project in Cleveland is that a large community center already exists across the street, and therefore there will be no capital cost to the project for the provision of these facilities. How should this affect the rents?

Public housing presents still another possibility for adjusting the charge for shelter upon social considerations. This is the policy called in England "differential rent," already in vogue in twenty-four cities. It is expounded briefly in the appendix by Mrs. Eva M. Hubback to Sir Ernest Simon's "The Anti-Slum Campaign."⁸

It is an attempt to give regard to need as well as ability to pay, by basing the rent upon the size of the family. The low wage earning couple with many children are not to be penalized for needing many rooms, but are to pay a proportionately diminished rent for each additional child. The city of Leeds is reported to have carried this principle even further:

A tenant with more than a certain family income will pay the full economic rent of his home—that is, whatever would be the rent of the house if there were no subsidy payable in respect of it. The subsidies so released will be pooled, and from the pool rebates of rent will be made to poorer tenants, until a man with an income below a certain point will pay no rent at all.⁹

The problem of tenant selection will perhaps raise legal questions: it will certainly raise administrative ones. The state has already taken a hand here in New York by making it a penal offense for a private landlord to refuse to rent an apartment because the prospective tenant has children.¹⁰ Of course, only a stupid landlord will run afoul of this expression of legislative moral fervor; with only slight ingenuity he can think of enough other excuses to make it impossible to secure a conviction. There is really a series of problems here. Can a means test be invoked? Until our cities suffer a more general transformation than will result from the first demonstration projects, it will be true that however simple the dwellings, the standards of light, air, and amenity resulting from the low land coverage and provision of community facilities will produce an environment pleasanter than that in which most urban readers of this journal now live: the intelligentsia will crowd hard on the proletariat.

What evidence of assimilability can be required from prospective residents? If our old friends, the Zilches, have a long record in the welfare agencies, domestic relations court and juvenile court, or have a feeble-minded child with perverse tendencies, can they safely be counted on to take part in a scheme of living which

⁷ Cf. the situation in *Simon v. O'Toole*, 108 N. J. L. 549, 158 Atl. 543 (1932); *aff'g*, on opinion below, 108 N. J. L. 32, 155 Atl. 449 (1931). There the City of Newark was sustained in spending \$1,200,000 to buy as a playground the inner portion of a block around the perimeter of which a limited-dividend corporation had built a housing project. The city's agreement to purchase stipulated that the playground was "to be maintained by the city for the benefit of the public at large."

⁸ SIMON, THE ANTI-SLUM CAMPAIGN (1933).

⁹ *Manchester Guardian*, Weekly Edition, February 9, 1934, p. 1.

¹⁰ N. Y. CONS. LAWS (Cahill, 1930) c. 41, §2041.

calls for active, creative coöperation with neighbors? This question is not intended to suggest for a moment that I share the Tory notion that slum-dwellers cause slums: there is plenty of evidence that any normal family will rise to a better opportunity, sometimes with tears of joy. I am thinking rather of socially pathological cases that may disrupt a promising experiment in community organization.¹¹

And then there is a problem which must gravely concern those who are responsible for framing the administrative schemes for public housing. We have heard from Herr Dollfuss's sympathizers that the Viennese housing projects were "Socialist fortresses." Public housing had been provided for perhaps 250,000 wage earners (in a city of 1,750,000) by a Socialist administration. Are our American projects to become Democratic fortresses? Sir Raymond Unwin reports that in English cities there are a number of election districts in which a majority of the voters now live in municipally owned dwellings. Picture a municipal campaign waged on competing platforms for the reduction of the rents of the public housing! A free radio in every apartment!

Ultimately, of course, the problem is one of building an administrative *esprit* that scorns such considerations; but the pattern can promote or retard the growth of this delicate plant. It seems almost essential to interpose some administrative agency between the electors and the elected, which will not be too sensitive to the winds of political change. A housing board with overlapping terms (whether a part of the city government, or an independent authority) seems essential; with freedom to pick its personnel on merit (whether or not under civil service).

I have been able in this brief article only to suggest those inadequacies for public housing which we already recognize in our time-honored legal doctrines of relationship between houser and housed; and to pose some questions which are already in prospect, before the first public housing project is completed. I cannot answer all these questions: it will take the best skills and creative imagination of lawyers and administrators during the next few years to answer them. The answers will vary; meantime new questions will arise out of actual experience. Those in the field have a right to look to persons like the readers of this journal for help.

¹¹ At Hilversum, Holland, a separate housing project was provided for non-coöperators, from which they were allowed to graduate when they showed enough social education to take their place in a decently coöperative environment. See *Housing: The Need*, FORTUNE, Feb. 1932, p. 92.

